SEP - 3 2015

No. 14-1175

In the
Supreme Court of the United States

FRANCHISE TAX BOARD OF
THE STATE OF CALIFORNIA,
Petitioner,

v.

GILBERT P HYATT,
Respondent.

On Writ of Certiorari to the Supreme Court of Nevada

JOINT APPENDIX

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IN THE SUPREME COURT
FOR THE STATE OF NEVADA

No. 53264

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,

v.

GILBERT P. HYATT,

RELEVANT DOCKET ENTRIES

Date Filed	#	Docket Text
02/13/2009		Filed Certified Copy of Notice of Appeal/Settlement – SEALED – Notice Re Settlement Conference Program and Suspension of Rules mailed to all counsel. (The requesting of transcripts and briefing are slayed pursuant to NRAP 16(a)(1). Docketing Statement Form mailed to counsel for appellant(s).)
		* * *
03/11/2009	09-06209	Filed Certified Copy of Notice of Cross-Appeal– FILED UNDER SEAL– (Docketing statement mailed to counsel for cross-appellant.)

Date Filed	#	Docket Text
		* * *
04/08/2009	09-08787	Filed Order Granting Motion for Stay without Bond. We grant the motion for stay and direct the clerk of this court to file the reply provisionally received on March 27, 2009.
		* * *
07/20/2009		Received Opening Brief. (FILED PER ORDER 08/07/09).
07/20/2009		Received Appendix to Opening Brief, Vols. 1 through 93. (FILED PER ORDER 08/07/09)
07/20/2009	09-17734	Filed Amicus Brief. Amicus Curiae Brief of the State of Utah (Joined in by the States of Arkansas, Colorado, Delaware, Florida, Idaho, Maine, Maryland, Missouri, Ohio, Oklahoma, North Dakota, Tennessee, Vermont, Virginia and Washington)
		* * *
07/22/2009		Received Amicus Brief. (FILED PER ORDER

Date Filed	#	Docket Text
		08/07/09). Brief of Amicus Curiae Multistate Tax Commission in Support of Appellant/Cross-Respondent Franchise Tax Board of the State of California
		* * *
08/07/2009	09-19313	Filed Order Resolving Motions. We direct the clerk of this court to file the opening brief and appendices received on July 20, 2009. Two motions for association of counsel for purposes of filing amicus curiae briefs have been filed by the Solicitor General for the State of Nevada, one for association of Clark Len Snelson, Esq , for filing an amicus curiae brief on behalf of the state of Utah and 15 other states, and one for association of Bruce J Fort, Esq., for filing an amicus curiae brief on behalf of the Multistate Tax Commission. Having reviewed the motions, we

Date Filed	#	Docket Text
		grant both. The Nevada Solicitor General also filed a motion on behalf of the Multistate Tax Commission requesting leave to file an amicus curiae brief. Then, the Nevada Solicitor General filed a motion to strike the previous motion because the Multistate Tax Commission filed its own motion requesting leave to file an amicus curiae brief. We grant the motion to strike the motion to file an amicus curiae brief filed by the Nevada Solicitor General. We grant the motion by the Multistate Tax Commission to file an amicus curiae brief and deny Hyatt's motions to strike. We direct the clerk of this court to file the amicus curiae brief or the Multistate Tax Commission that was provisionally received on July 22, 2009.

Date Filed	#	Docket Text
08/07/2009	09-17730	Filed Opening Brief. Appellant/Cross-Respondent.
08/07/2009	09-17732	Filed Appendix to Opening Brief. Vols 1 through 93.
08/07/2009	09-17945	Filed Amicus Brief. Brief of Amicus Curiae Multistate Tax Commission in Support of Appellant/Cross Respondent Franchise Tax Board of the State of California.
	* * *	
10/06/2009	09-24437	Filed Appendix. Supplemental Appellant's Appendix.
	* * *	
12/21/2009	09-30822	Filed Appendix to Answering Brief. Volumes 1-101. (Respondent/Cross-Appellant)
	* * *	
01/06/2010		Received Answering Brief. (FILED PER ORDER 01/26/10). Respondent/Cross-Appellant.

Date Filed	#	Docket Text
	* * *	
01/26/2010	10-02103	Filed Order Granting Motion to File Brief with Excess Pages. We direct the clerk of this court to file the Hyatt's proposed brief received on January 6, 2010. We grant Hyatt's motion for permission to file a reply to the opposition to the motion for permission to file a brief with excess pages. We direct the clerk of this court to detach and file the proposed reply attached to Hyatt's motion.
01/26/2010	10-00270	Filed Answering Brief. Respondent/Cross-Appellant.
	* * *	
06/01/2010		Received Reply Brief. Appellant/Cross-Respondent.
06/01/2010	10-14032	Filed Appendix to Reply Brief. Vols. 1 through 48. CD-ROM included. (Appellant/Cross-Respondent).
06/08/2010	10-14617	Filed Supplemental Brief Appellant's Supplemental

Date Filed	#	Docket Text
		Opening Brief Regarding Costs. (Appellant/Cross-Respondent).
06/08/2010	10-14619	Filed Appendix, Appellant's Supplemental Opening Brief Regarding Costs Appendix Vols 1-26 (Appellant/Cross-Respondent)
		* * *
06/11/2010	10-14031	Filed Reply Brief. Appellant/Cross-Respondent.
		* * *
08/13/2010	10-21059	Filed Reply Brief on Cross-Appeal. Respondent's Reply Cross-Appeal Brief.
8/16/2010		Filed Appendix to Reply Brief. Appendix of Exhibits for Respondent's Proposed Sur-Reply Vols 1 through 3 (STRICKEN PER ORDER 10/04/10)
		* * *
09/13/2010	10-23579	Filed Supplemental Brief-Respondent's Supplemental Answering Brief Regarding Costs.

Date Filed	#	Docket Text
09/14/2010	10-23581	Filed Appendix of Exhibits for Respondent's Supplemental Answering Brief Regarding Costs.
	* * *	
10/04/2010	10-25521	Filed Order Denying Motion to File Sur-Reply. We deny the motion for leave to file a sur-reply and direct the clerk of this court to return, unfiled, the proposed sur-reply submitted by Hyatt on August 13, 2010, and to strike the appendix to the sur-reply filed on August 16, 2010.
10/12/2010	10-26724	Filed Appellant's Supplemental Reply Brief Regarding Costs.
	* * *	
02/24/2012	12-05946	Filed Order Setting Oral Argument. We direct the clerk of this court to schedule oral argument on the next available calendar before the full court. Argument shall be one hour.
02/27/2012	12-06127	Issued Notice Scheduling Oral Argument.

Date Filed	#	Docket Text
		Argument is scheduled for Tuesday, April, 3, 2012, @ 10:00 a.m. Argument shall be limited 60 minutes.
		* * *
03/07/2012	12-07339	Filed Order Granting Motion. Oral argument presently scheduled for April 3, 2012, at 10:00 a.m., is hereby vacated. The clerk of this court is directed to schedule this appeal for oral argument before the en banc court on May 7, 2012. Argument shall be limited to 60 minutes.
04/02/2012	12-10235	Issued Notice Scheduling Oral Argument. Oral argument is scheduled for Monday, May 7, 2012, at 1:30 p.m. in Carson City. Argument shall be limited to one hour.
		* * *
05/07/2012		Oral argument held this day Case submitted for decision before the En Banc Court.

Date Filed	#	Docket Text
05/11/2012	12-15172	Filed Order Scheduling Additional Oral Argument. The clerk of this court shall schedule this matter for oral argument on Monday, June 18, 2012, at 10:00 a.m., at the courtroom in Carson City. Argument shall be limited to 60 minutes.
05/14/2012	12-15226	Issued Notice Scheduling Additional Oral Argument. Oral argument is scheduled for Monday, June 18, 2012, at 10:00 a.m. in Carson City. Argument shall be limited to 60 minutes.
		* * *
06/18/2012		Oral argument held this day. Case submitted for decision before the En Banc Court.
		* * *
09/18/2014	14-30944	Filed Authored Opinion "Affirmed in part, reversed in part, and remanded." [The Honorable Nancy M. Saitta, Justice,

Date Filed	#	Docket Text
		voluntarily recused herself from participation in the decision of this matter.] Before the Court En Banc. Author: Hardesty, J. Majority: Hardesty/Gibbons/Pickering/Parraguirre/Douglas/ Cherry. 130 Nev. Adv. Opn. No. 71 EN BANC
		* * *
10/06/2014		Received Appellant's Petition for Rehearing (via E-Flex). (FILED PER ORDER 10/16/2014).
10/07/2014	14-33200	Filed Respondent/Cross-Appellant Gilbert P. Hyatt's Petition for Rehearing.
		* * *
10/07/2014	14-33271	Filed Order Granting Motion for Leave to File Oversized Rehearing Petition and Directing Answers. The clerk of this court is directed to file Franchise Tax Board's rehearing petition which was provisionally received on October 6, 2014. FTB's answer to Gilbert P.

Date Filed	#	Docket Text
		Hyatt's petition for rehearing due: 15 days. Mr. Hyatt's answer to FTB's petition for rehearing due: 15 days.
10/07/2014	14-33272	Filed Petition for Rehearing – Appellant/Cross-Respondent's Petition for Rehearing.
		* * *
10/21/2014	14-35087	Filed Appellant/Cross-Respondent Franchise Tax Board's Answer to Respondent's Petition for Rehearing.
		* * *
10/22/2014		Received Answer to Petition for Rehearing – Respondent Gilbert P. Hyatt's Answer to Appellant Franchise Tax Board of the State of California's Petition for Rehearing. (FILED PER ORDER 10/23/2014)
		* * *
10/23/2014	14-35358	Filed Respondent Gilbert P. Hyatt's Answer to Appellant Franchise Tax

Date Filed	#	Docket Text
		Board of the State of California's Petition for Rehearing.
11/25/2014	14-38932	Filed Order Denying Petitions for Rehearing. "We deny both petitions." NRAP 40(c). [The Honorable Nancy M. Saitta, Justice, voluntarily recused herself from participation in the decision of this matter.]
12/15/2014	14-40739	Filed Motion to Stay Remittitur Pending Application to U.S. Supreme Court for a Writ of Certiorari, or to Enlarge Time for Issuance of Remittitur.
		* * *
01/02/2015	15-00017	Filed Order Staying Remittitur. We hereby stay issuance of the remittitur until April 22, 2015. If the clerk of this court receives written notice by April 22, 2015, from the clerk of the United States Supreme Court that

Date Filed	#	Docket Text
		appellant/cross-respondent has filed a petition for a writ of certiorari, the stay shall continue in effect until final disposition of the certiorari proceedings. If such notice is not received by April 22, 2015, the remittitur shall issue on April 23, 2015.
01/21/2015	15-02203	Filed Notice from the U.S. Supreme Court extending the time within which to file a petition for writ of certiorari to March 23, 2015.
03/31/2015	15-09679	Filed Notice from US Supreme Court/Certiorari Filed. A petition for a writ of certiorari was filed 3/25/15 and placed on the docket as Case No. 14-1175.
07/07/2015	15-20652	Filed Notice from US Supreme Court. The Petition for Writ of Certiorari is Granted Limited to Question 2 and 3 Presented by the Petition.

DISTRICT COURT
CLARK COUNTY, NEVADA

No. A382999

GILBERT P. HYATT,

Plaintiff,

v.

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA, and DOES 1-100, inclusive,

Defendants.

RELEVANT DOCKET ENTRIES

Date Filed	Docket Text
01/06/1998	**Filed Under Seal** *D Complaint Filed* Fee $128.00
02/17/1998	**Filed Under Seal** *D SPECIALLY-APPEARING DEFENDANT FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA'S NOTICE OF FILING OF PETITION FOR REMOVAL*
06/12/1998	**Filed Under Seal** *D FIRST AMENDED COMPLAINT*

Date Filed	Docket Text
08/13/1998	**Filed Under Seal** *D ANSWER TO FIRST AMENDED COMPLAINT*
04/19/1999	**Filed Under Seal** *PARTIAL JUDGMENT ON THE PLEADINGS*
04/18/2006	**Filed Under Seal** *D SECOND AMENDED COMP*
04/14/2008	**Conversion Case Event Type** *TRIAL BEGINS*
08/06/2008	**Judgment** *VERDICT*
08/06/2008	**Filed Under Seal** *SPECIAL VERDICT FORM*
08/15/2008	**Conversion Case Event Type** *TRIAL ENDS*
09/08/2008	**Judgment** *JUDGMENT PLUS INTEREST*
09/08/2008	**Filed Under Seal** *JUDGMENT*
09/08/2008	**Filed Under Seal** *NOTICE OF ENTRY OF JUDGMENT*

Date Filed	Docket Text
02/03/2009	**Filed Under Seal** *ORDER DENYING 1-FTBS MOTION FOR JUDGMENT AS A MATTER OF LAW OR ALTERNATIVELY AND CONDITIONALLY MTN FOR NEW TRIAL 2-FTBS ALTERNATIVE MTN FOR NEW TRIAL AND OTHER RELIEF*
02/10/2009	**Filed Under Seal** *NOTICE OF APPEAL (SC 53264)*
05/05/2009	**Notice of Appeal** *Supplemental and/or Amended Notice of Appeal*

DISTRICT COURT
CLARK COUNTY, NEVADA

No. A382999

GILBERT P. HYATT,

Plaintiff,

v.

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA, and DOES 1-100, inclusive,

Defendants.

Jury Trial Demanded
Exempt from Arbitration:
Declaratory Relief, Significant Public Policy and Amount in Excess Of $40,000

Filed: January 6, 1998

COMPLAINT

Plaintiff, Gilbert P. Hyatt, complains against defendants, and each of them, as follows:

PARTIES

1. Plaintiff resides in Clark County, Nevada and has done so since September 26, 1991.

2. Defendant Franchise Tax Board of the State of California (hereinafter "FTB") is a governmental agency of the State of California with its principal office located in Sacramento, California, and a district office located in Los Angeles, California. The FTB's

function is to ensure the collection of state income taxes from California residents and from income earned in California by non-residents.

3. The identity and capacities of the defendants designated as Does 1 through 100 are so designated by plaintiff because of his intent by this complaint to include as named defendants every individual or entity who, in concert with the FTB as an employee, representative, agent or independent contractor, committed the tortious acts described in this complaint. The true names and capacities of these Doe defendants are presently known only to the FTB, who committed the tortious acts in Nevada with the assistance of said Doe defendants who are designated by fictitious names only until plaintiff is able, through discovery, to obtain their true identities and capacities; upon ascertaining the true names and capacities of these Doe defendants, plaintiff shall promptly amend this complaint to properly name them by their actual identities and capacities. For pleading purposes, whenever this complaint refers to "defendants," it shall refer to these Doe defendants, whether individuals, corporations or other forms of associations or entities, until their true names are added by amendment along with particularized facts concerning their conduct in the commission of the tortious acts alleged herein.

4. Plaintiff is informed and believes, and on that basis alleges, that defendants, in acting or omitting to act as alleged, acted or omitted to act within the course and scope of their employment or agency, and in furtherance of their employer's or principal's business, whether the employer or principal be FTB or some

other governmental agency or employer or principal whose identity is not yet known; and that FTB and defendants were otherwise responsible and liable for the acts and omissions alleged herein.

5. This action is exempt from the court-annexed arbitration program, pursuant to Rule 3, because: (1) this is an action for, *inter alia*, declaratory relief; (2) substantial issues of public policy are implicated concerning the sovereignty of the State of Nevada and the integrity of its territorial boundaries as opposed to governmental agencies of another state who enter Nevada in an effort to extraterritorially, arbitrarily and deceptively enforce their policies, rules and regulations on residents of Nevada in general, and plaintiff Gilbert P. Hyatt in particular; and (3) the sums of money and damages involved herein far exceed the $40,000.00 jurisdictional limit of the arbitration program.

6. Plaintiff hereby requests a jury trial for his Second, Third, Fourth, and Fifth Causes of Action.

SUMMARY OF CLAIMS

7. Plaintiff, by this action, seeks: (1) declaratory relief under NRS 30.010 *et seq.* to confirm plaintiff's status as a Nevada resident effective as of September 26, 1991 and continuing to the present and, correspondingly, his non-residency during said period in California; (2) recovery of compensatory and punitive damages against the FTB and the defendants for invasion of plaintiff's right of privacy resulting from their investigation in Nevada of plaintiff's residency, domicile and place of abode and causing (a) an unreasonable intrusion upon plaintiff's seclusion, (b) an unreasonable publicity given to private facts,

and (c) casting plaintiff in a false light; and (3) recovery of compensatory and punitive damages against the FTB and the defendants for their outrageous conduct in regard to their investigation in Nevada of plaintiff's residency, domicile and place of abode. The claims specified in this paragraph constitute five separate causes of action as hereinafter set forth in this complaint.

FACTUAL BACKGROUND

PLAINTIFF'S RESIDENCY IN NEVADA

8. Plaintiff moved to the State of Nevada, County of Clark, and established full-time residency here on September 26, 1991 and has remained a full-time, permanent resident since that time. Prior to his relocation to Nevada, plaintiff resided in Southern California. Plaintiff is a highly successful inventor. Specifically, plaintiff has been granted numerous important patents for a wide range of inventions relating to computer technology. Plaintiff primarily works alone in the creation and development of his inventions and greatly values his privacy both in his personal life and business affairs. After certain of his important inventions were granted patents in 1990, plaintiff began receiving a great deal of unwanted and unsolicited publicity, notoriety and attention. To greater protect his privacy, to enjoy the social, recreational, and financial advantages Nevada has to offer, and to generally enhance the quality of his life and environment, plaintiff relocated to Nevada on September 26, 1991. This move took place after much consideration and almost an entire year of planning.

9. The following events are indicative of the fact that on September 26, 1991, plaintiff commenced both

his residency and intent to remain in Nevada, and a continuation of both down to the present: (1) the sale of plaintiff's California home in October 1991; (2) his renting and residing at an apartment in Las Vegas commencing in October 1991 and continuing until April 1992 when plaintiff closed the purchase of a home in Las Vegas; (3) in November 1991, plaintiff registered to vote in Nevada, obtained a Nevada driver's license, and joined a religious organization in Las Vegas; (4) plaintiff's extensive search, commencing in December 1991, for a new home in Las Vegas, and in the process utilizing the services of various real estate brokers; (5) during the process of finding a home to purchase, plaintiff made numerous offers to buy; (6) plaintiff's purchase of a new home in Las Vegas on April 3, 1992; (7) plaintiff maintained and expanded his business interests from Las Vegas; and (8) plaintiff has, through the years from September 26, 1991 and down to the present, contacted persons in high political office, in the professions, and other walks of life, as a true Nevada resident of some renown would, not concealing the fact of his Nevada residency. In sum, plaintiff has substantial evidence, both testimonial and documentary, in support of the fact of his full-time residency, domicile and place of abode in Nevada commencing on September 26, 1991 and continuing to the present.

THE FTB AND DEFENDANTS' INVESTIGATION OF PLAINTIFF IN NEVADA

10. Because plaintiff was a resident of California for part of 1991, plaintiff filed a Part-Year state income tax return with the State of California for 1991

(the "1991 Return"). Said return reflects plaintiff's payment of state income taxes to California for income earned during the period of January 1 through September 26, 1991.

11. In or about June of 1993 – 21 months after plaintiff moved to Nevada – for reasons that have never been specified, but are otherwise apparent, the FTB began an audit of the 1991 Return. In or about July of 1993, as part of its audit, the FTB began to investigate plaintiff by making or causing to be made numerous and continuous contacts directed at Nevada. Initially, the FTB sent requests to Nevada government agencies for information concerning plaintiff – a paper foray that continued for the next several years.

12. In or about January of 1995, FTB auditors began planning a trip to Las Vegas, the purpose of which was to enhance and expand the scope of their investigation of plaintiff. In March of 1995, the FTB and defendants commenced a "hands on" investigation of plaintiff that included unannounced confrontations and questioning about private details of plaintiff's life. These intrusive activities were directed at numerous residents of Nevada, including plaintiff's current and former neighbors, employees of businesses and stores frequented by plaintiff, and alas, even his trash collector!

13. Both prior and subsequent to the intrusive, "hands on" investigations described in paragraph 12, above, the FTB propounded to numerous Nevada business and professional entities and individual residents of Nevada "quasi-subpoenas" entitled "Demand to Furnish Information" which cited the

FTB's authority under California law to issue subpoenas and demanded that the recipients thereof produce the requested information concerning plaintiff. Plaintiff is informed and believes, and therefore alleges, that the FTB never sought permission from a Nevada court or any Nevada government agency to send such "quasi-subpoenas" into Nevada where, induced by the authoritative appearance of the inquisitions, many Nevada residents and business entities did respond with answers and information concerning plaintiff.

14. Subsequent to the documentary and "hands on" forays into Nevada by the FTB and defendants, the FTB also sent correspondence, rather than "quasi-subpoenas," to Nevada Governor Bob Miller, Nevada Senator Richard Bryan and other government officials and agencies seeking information regarding plaintiff and his residency in Nevada. Plaintiff is further informed and believes, and therefore alleges, that the FTB intentionally sent unauthorized "quasi-subpoenas" (i.e., "Demand to Furnish Information") to private individuals and businesses in a successful attempt to coerce their cooperation through deception and the pretense of an authoritative demand, while on the other hand, sending respectful letter requests for information to Nevada governmental agencies and officials who undoubtedly would have recoiled at the attempt by the FTB to exercise extraterritorial authority in Nevada through the outrageous means of the bogus subpoenas.

15. Plaintiff neither authorized the FTB's aforementioned documentary and pretentious forays into Nevada, nor was plaintiff ever aware that such

information was being sought in such a manner until well after the "quasi-subpoenas" had been issued and the responses received. Similarly, plaintiff had no knowledge of the FTB and defendants' excursions to Las Vegas to investigate plaintiff or the FTB's correspondence with Nevada government agencies and officials until well after such contacts had taken place. Upon information and belief, plaintiff alleges that all of the above-described activities were calculated to enable the FTB to develop a colorable basis for assessing a huge tax against plaintiff despite the obvious fact that the FTB was proceeding against a bona fide resident of Nevada.

ASSESSMENT FOR 1991

16. On April 23, 1996, after the FTB had completed its audit and investigation of the 1991 Return, the FTB sent a Notice of Proposed Assessment (i.e., a formal notice that taxes are owed) to plaintiff in which the FTB claimed plaintiff was a resident of California – not Nevada – until April 3, 1992. The FTB therefore assessed plaintiff's California state income tax for the period of September 26 through December 31 of 1991 in a substantial amount. Moreover, the FTB also assessed a penalty against plaintiff in an amount almost equal to the assessed tax after summarily concluding that plaintiff's non-payment of the assessed tax, based upon his asserted residency in Nevada and non-residency in California, was fraudulent.

17. Plaintiff, who demonstrably is and was at all times pertinent hereto, a bona fide resident of Nevada should not be forced into a California forum to seek relief from the unjust and tortious attempts by the

FTB to extort unlawful taxes from this Nevada resident. Plaintiff avers that the manufactured issue of his residency in Nevada for the period of September 26 through December 31 of 1991 should be determined in Nevada, the state of plaintiff's residence. The FTB is in effect attempting to impose an "exit tax" on plaintiff by coercing him into administrative procedures and possible future court action in California. The FTB has arbitrarily, maliciously and without support in law or fact, asserted that plaintiff remained a California resident until he purchased and closed escrow on a new home in Las Vegas on April 3, 1992. In a word, the FTB's prolonged and monumental efforts to find a way – any way – to effectively assess additional income taxes against plaintiff after he changed his residency from California to Nevada is based upon governmental greed arising from the FTB's eventual awareness of the financial success plaintiff has realized since leaving California and becoming a bona fide resident of the State of Nevada. The aforesaid date of Nevada residency accepted by the FTB with respect to the 1991 Report is over six months after plaintiff moved to Nevada with the intent to stay and began, he thought, to enjoy all the privileges and advantages of residency in his new state.

THE FTB'S CONTINUING PURSUIT OF PLAINTIFF IN NEVADA

18. On or about April 1, 1996, plaintiff received formal notice that the FTB had commenced an investigation into the 1992 tax year and that its tentative determination was that plaintiff would also

be assessed California state income taxes for the period of January 1 through April 3 of 1992.

19. On or about April 10, 1997 and May 12, 1997 respectively, plaintiff received notices from the FTB that it would be issuing a formal "Notice of Proposed Assessment" in regard to the 1992 tax year in which it will seek back taxes from plaintiff for income earned during the period of January 1 through April 2, 1992 and in addition would seek penalties for plaintiff's failure to file a state income tax return for 1992.

20. Prior to the FTB sending the formal Notice of Proposed Assessment for the 1992 tax year, a representative of the FTB stated to one of plaintiff's representatives that disputes over such assessments by the FTB always settle at this stage as taxpayers do not want to risk their personal financial information being made public. Plaintiff understood this statement to be a strong suggestion by the FTB that he settle the dispute by payment of some portion of the assessed taxes and penalties. Plaintiff refused, and continues to refuse to do so, as he has not been a resident of California since his move to Nevada on September 26, 1991, and it remains clear to him that the FTB is engaging in its highhanded tactics to extort "taxes and penalties" from him that he does not legally or morally owe.

21. On or about August 14, 1997, plaintiff received a formal Notice of Proposed Assessment for 1992. Despite the FTB's earlier written statements and findings that plaintiff became a Nevada resident at least as of April 3, 1992 and its statement in such Notice of Proposed Assessment that "We [the FTB] consider you to be a resident of this state [California]

through April 2, 1992," such notice proceeded to assess California state income taxes on plaintiff's income for the entire year of 1992. Specifically, the FTB assessed plaintiff state income taxes for 1992 in an amount five times greater than that for 1991, assessed plaintiff a penalty almost as great as the assessed tax for alleged fraud in claiming he was a Nevada resident during 1992, and stated that interest accrued through August 14, 1997 (roughly the equivalent of the penalty) was also owed on the assessed tax and penalty. In short, the State of California, through the FTB, sent plaintiff a bill for the entire 1992 tax year, which was fourteen times the amount of tax it initially assessed for 1991, and in so doing asserted that plaintiff was "a California resident for the entire year." Without explanation the FTB ignored its earlier finding and written acknowledgment that plaintiff was a Nevada resident at least as of April 3, 1992. This outrage is a transparent effort to extort substantial sums of money from a Nevada resident.

22. Plaintiff is informed and believes, and therefore alleges, that the FTB intends to engage in a repeat of the "hands on," extraterritorial investigations directed at plaintiff within the State of Nevada in an effort to conjure up a colorable basis for justifying its frivolous, extortionate Noticed of Proposed Assessment for the 1992 tax year.

23. Plaintiff is informed and believes, and therefore alleges, that the FTB may continue to assess plaintiff's California state income taxes for the years 1993, 1994, 1995, 1996 and beyond since the FTB has now disregarded its own conclusion regarding plaintiff's residency in Nevada as of April 3, 1992, and

is bent on charging him with a staggering amount of taxes, penalties and interest irrespective of his status as a bona fide resident of Nevada. It appears from its actions concerning plaintiff, that the FTB has embraced a new theory of liability that in effect declares "once a California resident always a California resident" as long as the victim continues to generate significant amounts of income. Thus, the FTB has raised an invisible equivalent of the iron curtain that prohibits such residents from ever leaving the taxing jurisdiction of the FTB.

THE FTB'S MOTIVE

24. Plaintiff is informed and believes, and therefore alleges, that the FTB has no credible, admissible evidence that plaintiff was a California resident at anytime after September of 1991, despite the FTB's exhaustive extraterritorial investigations in Nevada. The FTB has acknowledged in its own reports that plaintiff sold his California home on October 1, 1991, that plaintiff rented an apartment in Las Vegas from November 1991 until April 1992 and that plaintiff purchased a home in Las Vegas in April 1992.

25. Plaintiff is informed and believes, and therefore alleges, that the assessments by the FTB against plaintiff for 1991 and 1992 result from the fact that almost two years after plaintiff moved from California to Nevada an FTB investigator read a magazine article about plaintiff's wealth and the FTB thereafter launched its investigation in the hope of extracting a significant settlement from plaintiff. Plaintiff is further informed and believes, and therefore alleges, that the FTB has assessed a fraud

penalty against plaintiff for the 1991 tax year and issued a Notice of Proposed Assessment assessing plaintiff for the entire 1992 tax year and a fraud penalty for the same year to intimidate plaintiff and coerce him into paying some significant amount of tax for income earned after September 26, 1991, despite its awareness that plaintiff actually became a Nevada resident at that time. Plaintiff alleges that the FTB's efforts to coerce plaintiff into sharing his hard-earned wealth despite having no lawful basis for doing so, constitutes malice and oppression.

JURISDICTION

26. This court has personal jurisdiction over the FTB pursuant to Nevada's "long-arm" statute, NRS 14.065 *et seq.*, because of the FTB's tortious extraterritorial contacts and investigatory conduct within the State of Nevada ostensibly as part of its auditing efforts to undermine plaintiff's status as a Nevada resident, but in reality to create a colorable basis for maintaining that plaintiff continued his residency in California during the period September 26, 1991 to December 31, 1991 and beyond.

27. Plaintiff is informed and believes, and therefore alleges, that the FTB has a pattern and practice of entering into Nevada to investigate Nevada residents who were formerly residents of California, and then assessing such residents California state income taxes for time periods subsequent to the date when such individuals moved to and established residency in Nevada.

FIRST CAUSE OF ACTION
(FOR DECLARATORY RELIEF)

28. Plaintiff realleges and incorporates herein by references each and every allegation contained in paragraphs 1 through 27 above, as though set forth herein verbatim.

29. Pursuant to California law, in determining whether an individual was a resident of California for a certain time period thereby making such individual's income subject to California state income tax during such period, the individual must have been either domiciled in California during such period for "other than a temporary or transitory purpose." *See* Cal. Rev. & Tax Code § 17014. The FTB's own regulations and precedents require that it apply certain factors in determining an individual's domicile and/or whether the individual's presence in California (or outside of California) was more than temporary or transitory.

A. Domicile

Domicile is determined by the individual's physical presence in California with intent to stay or if absent temporarily from California an intent to return. Such intent is determined by the acts and conduct of the individual such as: (1) where the individual is registered to vote and votes; (2) location of the individual's permanent home; (3) comparative size of homes maintained by the individual in different states; (4) where the individual files federal income tax returns; (5) comparative time spent by the individual in different states; (6) cancellation of the individual's California homeowner's property tax exemption; (7) obtaining a driver's license from another state; (8) registering a car in another state; (9)

joining religious, business and/or social organizations in another state; and (10) establishment of a successful business in another state by an individual who is self employed.

B. Temporary or Transitory Purpose

The following contacts which are similar although not identical to those used to determine domicile are important in determining whether an individual was in California (or left California) for a temporary or transitory purpose: (1) physical presence of the individual in California in comparison to the other state or states; (2) establishment of a successful business in another state by an individual who is self employed; (3) extensive business interest outside of California and active participation in such business by the individual; (4) banking activity in California by the individual is given some, although not a great deal of, weight; (5) rental of property in another state by the individual; (6) cancellation of the individual's California homeowner's property tax exemption; (7) hiring professionals by the individual located in another states; (8) obtaining a driver's license from another states; (9) registering a car in another state; (10) joining religious, business, and/or social organizations in another state; and (11) where the individual is registered to vote and votes.

30. The FTB's assessment of taxes and a penalty of 1991 is based upon the FTB's conclusion in the first instance that plaintiff did not become a resident of Nevada until April 3, 1992, the date on which plaintiff closed escrow on a new home in Las Vegas. In coming to such a conclusion, the FTB discounted or refused to consider a multitude of evidentiary facts which

contradicted the FTB's conclusion, and were the type of facts the FTB's own regulations and precedents require it to consider. Such facts include, but are not limited to, the following: (1) plaintiff sold his California home on October 1, 1991 until April of 1992; (2) plaintiff rented and resided at an apartment in Las Vegas from October 1; (3) plaintiff registered to vote, obtained a Nevada's driver's license (thereby relinquishing his California driver's license), and joined a Las Vegas religious organization in November of 1991; (4) plaintiff terminated his California home owner's exemption effective October 1, 1991; (5) plaintiff began actively searching for a house to buy in Las Vegas, and submitted numerous offers on houses in Las Vegas, commencing in December of 1991; (6) plaintiff's offer to purchase a home in Las Vegas was accepted in March of 1992 and escrow closed on such purchase on April 3, 1992; and (7) plaintiff's new home in Las Vegas was substantially larger than the home in Southern California, which he sold in October of 1991.

31. An actual controversy exists as to whether plaintiff was a full-time resident of Nevada – not California – commencing on September 26, 1991 through December 31, 1991 and continuing thereafter through the year 1992 and beyond. Plaintiff contends that under either Nevada or California law, or both, he was a full-time, bona fide resident of Nevada throughout the referenced periods and down to the present, and that the FTB ignored its own regulations and precedents in finding to the contrary, and that the FTB has no jurisdiction to impose a tax obligation on plaintiff during the contested periods. Plaintiff also contends that the FTB had no authority to conduct an

extraterritorial investigation of plaintiff in Nevada and no authority to propound "quasi-subpoenas" to Nevada residents and businesses, thereby seeking to coerce the cooperation of said Nevada residents and businesses through an unlawful and tortious deception, to reveal information about plaintiff. Plaintiff is informed and believes, and therefore alleges, that the FTB contends in all respects to the contrary.

32. Plaintiff therefore requests judgment of this Court declaring and confirming plaintiff's status as a full-time, bona fide resident of the State of Nevada effective from September 26, 1991 to the present, and for judgment declaring the FTB's extraterritorial investigatory excursions into Nevada, and the submission of "quasi-subpoenas" to Nevada residents without approval from a Nevada court or governmental agency, as alleged above, to be without authority and violative of Nevada's sovereignty and territorial integrity.

SECOND CAUSE OF ACTION
(FOR INVASION OF PRIVACY – UNREASONABLE INTRUSION UPON THE SECLUSION OF ANOTHER)

33. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 27, and 29 through 31, above, as though set forth herein verbatim.

34. Plaintiff is informed and believes, and therefore alleges, that neighbors, businesses, government officials and others within Nevada with whom plaintiff has had and would reasonably expect in the future to have social or business interactions,

were approached and questioned by the FTB and defendants who disclosed or implied that plaintiff was under investigation in California, and otherwise acted in such a manner as to cause doubts to arise concerning plaintiff's integrity and moral character. Moreover, as part of the audit/investigation in regard to the 1991 Return, plaintiff turned over to the FTB highly personal and confidential information with the understanding that it would remain confidential. The FTB even noted in its own internal documentation that plaintiff had a significant concern in regard to the protection of his privacy in turning over such information. At the time this occurred, plaintiff was still hopeful that the FTB was actually operating in good faith, a proposition that, as noted throughout this complaint, proved to be utterly false.

35. Plaintiff is informed and believes, and therefore alleges, that the FTB and defendants nevertheless violated plaintiff's right to privacy in regard to such information by revealing it to third parties and otherwise conducting an investigation in Nevada through which the FTB and defendants revealed to third parties personal and confidential information, which plaintiff had every right to expect would not be revealed to such parties.

36. Plaintiff is informed and believes, and therefore alleges, that the FTB and defendants' extensive probing and investigation of plaintiff, including their actions both occurring within Nevada and directed to Nevada from California, were performed with the intent to harass, annoy, vex, embarrass and intimidate plaintiff such that he would eventually enter into a settlement with the FTB

concerning his residency during the disputed time periods and the taxes and penalties allegedly owed. Such conduct by the FTB and defendants did in fact harass, annoy, vex and embarrass Hyatt, and syphon his time and energies from the productive work in which he is engaged.

37. Plaintiff is informed and believes, and therefore alleges, that the FTB and defendants through their investigative actions, and in particular the manner in which they were carried out in Nevada, intentionally intruded into the solitude and seclusion which plaintiff had specifically sought by moving to Nevada. The intrusion by the FTB and defendants was such that any reasonable person, including plaintiff, would find highly offensive.

38. As a direct, proximate, and foreseeable result of the FTB and defendants' aforementioned invasion of plaintiff's privacy, plaintiff has suffered actual and consequential damages in total amount in excess of $10,000.

39. Plaintiff is informed and believes, and therefore alleges, that said invasion of plaintiff's privacy was intentional, malicious, and oppressive in that such invasion was despicable conduct by the FTB and defendants entered into with a willful and conscious disregard of plaintiff's rights, and the efficacious intent to cause him injury. Plaintiff is therefore entitled to an award of punitive damages against the FTB and defendants in an amount sufficient to satisfy the purposes for which such damages are awarded.

THIRD CAUSE OF ACTION
(FOR INVASION OF PRIVACY – UNREASONABLE PUBLICITY GIVEN TO PRIVATE FACTS)

40. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 27, 29 through 31, and 34 through 37, above, as though set forth herein verbatim.

41. As set forth above, plaintiff revealed to the FTB highly personal and confidential information at the request of the FTB as an ostensible part of its audit and investigation into plaintiff's residency during the disputed time periods. Plaintiff had a reasonable expectation that said information would be kept confidential and not revealed to third parties and the FTB and defendants knew and understood that said information was to be kept confidential and not revealed to third parties.

42. The FTB and defendants, without necessity or justification, nevertheless disclosed to third parties in Nevada certain of plaintiff's personal and confidential information which had been cooperatively disclosed to the FTB by plaintiff only for the purposes of facilitating the FTB's legitimate auditing and investigative efforts.

43. As a direct, proximate, and foreseeable result of the FTB's aforementioned invasion of plaintiff's privacy, plaintiff has suffered actual and consequential damages in a total amount in excess of $10,000.

44. Plaintiff is informed and believes, and therefore alleges, that said invasion of plaintiff's privacy was intentional, malicious, and oppressive in

that such invasion constituted despicable conduct by the FTB and defendants entered into with a willful and conscious disregard of the rights of plaintiff. Plaintiff is therefore entitled to an award of punitive or exemplary damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

FOURTH CAUSE OF ACTION
(FOR INVASION OF PRIVACY – CASTING PLAINTIFF IN FALSE LIGHT)

45. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 27, 29 through 31, 34 through 37, and 41 and 42, above, as if set forth herein verbatim.

46. By conducting interviews and interrogations of Nevada residents and by issuing unauthorized "Demands to Furnish Information" as part of their investigation in Nevada of plaintiff's residency, the FTB and defendants invaded plaintiff's right to privacy by stating or insinuating to said Nevada residents that plaintiff was under investigation in California, thereby falsely portraying plaintiff as having engaged in illegal and immoral conduct, and decidedly casting plaintiff's character in a false light.

47. The FTB and defendants' conduct in publicizing its investigation of plaintiff cast plaintiff in a false light in the public eye, thereby adversely compromising the attitude of those who know or would, in reasonable likelihood, come to know Gil Hyatt because of the nature and scope of his work. Such publicity of the investigation was offensive and objectionable to plaintiff and was carried out for other

than honorable, lawful, or reasonable purposes. Said conduct by the FTB and the defendants was calculated to harm, vex, annoy and intimidate plaintiff, and was not only offensive and embarrassing to plaintiff, but would have been equally so to any reasonable person of ordinary sensibilities similarly situated, as the conduct could only serve to damage plaintiff's reputation.

48. As a direct, proximate, and foreseeable result of the FTB and defendants' aforementioned invasion of plaintiff's privacy, plaintiff has suffered actual and consequential damages in a total amount in excess of $10,000.

49. Plaintiff is informed and believes, and therefore alleges, that said invasion of plaintiff's privacy was intentional, malicious, and oppressive in that such invasion of privacy was despicable conduct by the FTB and defendants, entered into with a willful and conscious disregard of the rights of plaintiff. Plaintiff is therefore entitled to an award of exemplary or punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

FIFTH CAUSE OF ACTION
(FOR THE TORT OF OUTRAGE)

50. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 27, 29 through 31, 34 through 37, 41 and 42, and 46 and 47, above, as if set forth herein verbatim.

51. The clandestine and reprehensible manner in which the FTB and defendants carried out their investigation in Nevada of plaintiff's Nevada residency under the cloak of authority from the State

of California, but without permission from the State of Nevada, and the FTB and defendants' apparent intent to continue to investigate and assess plaintiff's staggeringly high California state income taxes, interest, and penalties for the entire year of 1992 – and possibly continuing into future years – despite the FTB's own finding that plaintiff was a Nevada resident at least as of April of 1992, was, and continues to be, extreme, oppressive and outrageous conduct. The FTB has, in every sense, sought to hold plaintiff hostage in California, disdaining and abandoning all reason in its reprehensible, all-out effort to extort significant amounts of plaintiff's income without a basis in law or fact. Plaintiff is informed and believes, and therefore alleges, that the FTB and defendants carried out their investigation in Nevada for the ostensible purpose of seeking truth concerning his place of residency, but the true purpose of which was to so harass, annoy, embarrass, and intimidate plaintiff, and to cause him such severe emotional distress and worry as to coerce him into paying significant sums to the FTB irrespective of his demonstrably bona fide residence in Nevada throughout the disputed periods. As a result of such extremely outrageous and oppressive conduct on the part of the FTB and defendants, plaintiff has indeed suffered fear, grief, humiliation, embarrassment, anger, and a strong sense of outrage that any honest and reasonably sensitive person would feel if subjected to equivalent unrelenting, outrageous personal threats and insults by such powerful and determined adversaries.

52. As a direct, proximate, and foreseeable result of the FTB and defendants' aforementioned extreme,

unrelenting, and outrageous conduct, plaintiff has suffered actual and consequential damages in a total amount in excess of $10,000.

53. Plaintiff is informed and believes, and therefore alleges, that said extreme, unrelenting, and outrageous conduct was intentional, malicious, and oppressive in that it was despicable conduct by the FTB and defendants, entered into with a willful and conscious disregard of plaintiff's rights. Plaintiff is therefore entitled to an award of exemplary or punitive damages in an amount sufficient to satisfy the purposes for which such damages were awarded.

WHEREFORE, plaintiff respectfully prays for judgment against the FTB and defendants as follows:

FIRST CAUSE OF ACTION

1. For judgment declaring and confirming that plaintiff is a bona fide resident of the State of Nevada effective as of September 26, 1991 to the present;

2. For judgment declaring that the FTB has no lawful basis for continuing to investigate plaintiff in Nevada concerning his residency between September 26, 1991 through December 31, 1991 or any other subsequent period down to the present, and declaring that the FTB has no right or authority to propound or otherwise issue a "Demand to Furnish Information" or other quasi subpoenas to Nevada residents and businesses seeking information concerning plaintiff;

3. For costs of suit;

4. For reasonable attorneys' fees; and

5. For such other and further relief as the Court deems just and proper.

SECOND CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

3. For costs of suit;

4. For reasonable attorneys' fees; and

5. For such other and further relief as the Court deems just and proper.

THIRD CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

3. For costs of suit;

4. For reasonable attorneys' fees; and

5. For such other and further relief as the Court deems just and proper.

FOURTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

3. For costs of suit;

4. For reasonable attorneys' fees; and

5. For such other and further relief as the Court deems just and proper.

FIFTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

3. For costs of suit;

4. For reasonable attorneys' fees; and

5. For such other and further relief as the Court deems just and proper.

DATED this 6th day of January, 1998.

DISTRICT COURT
CLARK COUNTY, NEVADA

No. A382999

GILBERT P. HYATT,

Plaintiff,

v.

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA, and DOES 1-100, inclusive,

Defendants.

Jury Trial Demanded
Exempt from Arbitration:
Declaratory Relief, Significant Public Policy and Amount in Excess Of $40,000

Filed: June 12, 1998

FIRST AMENDED COMPLAINT

Plaintiff, Gilbert P. Hyatt, in this First Amended Complaint, complains against defendants, and each of them, as follows:

PARTIES

1. Plaintiff resides in Clark County, Nevada and has done so since September 26 1991

2. Defendant Franchise Tax Board of the State of California (hereinafter "FTB") is a governmental agency of the State of California with its principal office located in Sacramento, California, and a district

office located in Los Angeles, California. The FTB's function is to ensure the collection of state income taxes from California residents and from income earned in California by non-residents.

3. The identity and capacities of the defendants designated as Does 1 through 100 are so designated by plaintiff because of his intent by this complaint to include as named defendants every individual or entity who, in concert with the FTB as an employee, representative, agent or independent contractor, committed the tortious acts described in this complaint. The true names and capacities of these Doe defendants are presently known only to the FTB, who committed the tortious acts in Nevada with the assistance of said Doe defendants who are designated by fictitious names only until plaintiff is able through discovery to obtain their true identities and capacities; upon ascertaining the true names and capacities of these Doe defendants, plaintiff shall promptly amend this complaint to properly name them by their actual identities and capacities. For pleading purposes, whenever this complaint refers to "defendants" it shall refer to these Doe defendants, whether individuals, corporations or other forms of associations or entities, until their true names are added by amendment along with particularized facts concerning their conduct in the commission of the tortious acts alleged herein.

4. Plaintiff is informed and believes, and on that basis alleges, that defendants, in acting or omitting to act as alleged, acted or omitted to act within the course and scope of their employment or agency, and in furtherance of their employer's or principal's business, whether the employer or principal be the FTB or some

other governmental agency or employer or principal whose identity is not yet known; and that FTB and defendants were otherwise responsible and liable for the acts and omissions alleged herein.

5. This action is exempt from the court-annexed arbitration program, pursuant to Rule 3, because: (1) this is an action for, inter alia, declaratory relief; (2) substantial issues of public policy are implicated concerning the sovereignty of the State of Nevada and the integrity of its territorial boundaries as opposed to governmental agencies of another state who enter Nevada in an effort to extraterritorially, arbitrarily and deceptively enforce their policies, rules and regulations on residents of Nevada in general, and plaintiff Gilbert P. Hyatt in particular; and (3) the sums of money and damages involved herein far exceed the $40,000.00 jurisdictional limit of the arbitration program.

6. Plaintiff hereby requests a jury trial for his Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action.

SUMMARY OF CLAIMS

7. Plaintiff, by this action, seeks: (1) declaratory relief under NRS 30.010 *et seq.* to confirm plaintiff's status as Nevada resident effective as of September 26, 1991 and continuing to the present and, correspondingly, his non-residency during said period in California (FIRST CAUSE OF ACTION); (2) recovery of compensatory and punitive damages against the FTB and the defendants for invasion of plaintiff's right of privacy resulting from their investigation in Nevada of plaintiff's residency, domicile and place of abode and causing (a) an

unreasonable intrusion upon plaintiff's seclusion (SECOND CAUSE OF ACTION); (b) an unreasonable publicity given to private facts (THIRD CAUSE OF ACTION); (c) casting plaintiff in a false light (FOURTH CAUSE OF ACTION); (3) recovery of compensatory and punitive damages against the FTB and the defendants for their outrageous conduct in regard to their investigation in Nevada of plaintiff's residency, domicile and place of abode (FIFTH CAUSE OF ACTION); (4) recovery of compensatory and punitive damages against the FTB and defendants for an abuse of process (SIXTH CAUSE OF ACTION); (5) recovery of compensatory and punitive damages against the FTB and defendants for fraud (SEVENTH CAUSE OF ACTION); and (6) for compensatory damages against the FTB and defendants for negligent misrepresentation (EIGHTH CAUSE OF ACTION). The claims specified in this paragraph constitute EIGHT separate causes of action as hereinafter set forth in this complaint.

FACTUAL BACKGROUND

PLAINTIFF'S RESIDENCY IN NEVADA

8. Plaintiff moved to the State of Nevada County of Clark and established full-time residency here on September 26, 1991 and has remained a full-time, permanent resident since that time. Prior to his relocation to Nevada, plaintiff resided in Southern California. Plaintiff is highly successful inventor. Specifically, plaintiff has been granted numerous important patents for a wide range of inventions relating to computer technology. Plaintiff primarily works alone in the creation and development of his inventions and greatly values his privacy both in his

personal life and business affairs. After certain of his important inventions were granted patents in 1990, plaintiff began receiving great deal of unwanted and unsolicited publicity, notoriety and attention. To greater protect his privacy, to enjoy the social, recreational, and financial advantages Nevada has to offer, and to generally enhance the quality of his life and environment, plaintiff relocated to Nevada on September 26, 1991. This move took place after much consideration and almost an entire year of planning.

9. The following events are indicative of the fact that on September 26, 1991, plaintiff commenced both his residency and intent to remain in Nevada, and a continuation of both down to the present: (1) the sale of plaintiff's California home in October 1991; (2) his renting and residing at an apartment in Las Vegas commencing in October 1991 and continuing until April 1992 when plaintiff closed the purchase of a home in Las Vegas; (3) in November 1991 plaintiff registered to vote in Nevada, obtained a Nevada driver's license, and joined a religious organization in Las Vegas; (4) plaintiff's extensive search commencing in early October 1991, for a new home in Las Vegas, and in the process utilizing the services of various real estate brokers; (5) during the process of finding a home to purchase, plaintiff made numerous offers to buy; (6) plaintiff's purchase of a new home in Las Vegas on April 3, 1992; (7) plaintiff maintained and expanded his business interests from Las Vegas; and (8) plaintiff has, through the years from September 26, 1991 and down to the present, contacted persons in high political office, in the professions, and other walks of life, as a true Nevada resident of some renown would, not concealing the fact of his Nevada residency. In

sum, plaintiff has substantial evidence, both testimonial and documentary, in support of the fact of his full-time residency, domicile and place of abode in Nevada commencing on September 26, 1991 and continuing to the present.

THE FTB AND DEFENDANTS' INVESTIGATION OF PLAINTIFF IN NEVADA

10. Because plaintiff was a resident of California for part of 1991, plaintiff filed a Part-Year state income tax return with the State of California for 1991 (the "1991 Return"). Said return reflects plaintiff's payment of state income taxes to California for income earned during the period of January 1 through September 26, 1991.

11. In or about June of 1993 – 21 months after plaintiff moved to Nevada – for reasons that have never been specified, but are otherwise apparent, the FTB began an audit of the 1991 Return. In or about July of 1993, as part of its audit, the FTB began to investigate plaintiff by making or causing to be made numerous and continuous contacts directed at Nevada. Initially, the FTB sent requests to Nevada government agencies for information concerning plaintiff – a paper foray that continued for the next several years.

12. In or about January of 1995, FTB auditors began planning a trip to Las Vegas, the purpose of which was to enhance and expand the scope of their investigation of plaintiff. In March of 1995, the FTB and defendants commenced a "hands on" investigation of plaintiff that included unannounced confrontations and questioning about private details of plaintiff's life. These intrusive activities were directed at numerous

residents of Nevada, including plaintiff's current and former neighbors, employees of businesses and stores frequented by plaintiff, and alas, even his trash collector!

13. Both prior and subsequent to the intrusive, "hands on" investigations described in paragraph 12, above, the FTB propounded to numerous Nevada business and professional entities and individual residents of Nevada "quasi-subpoenas" entitled "Demand to Furnish Information" which cited the FTBs authority **under California law** to issue subpoenas and demanded that the recipients thereof produce the requested information concerning plaintiff. Plaintiff is informed and believes, and therefore alleges, that the FTB never sought permission from a Nevada court or any Nevada government agency to send such "quasi-subpoenas" into Nevada where, induced by the authoritative appearance of the inquisitions, many Nevada residents and business entities did respond with answers and information concerning plaintiff.

14. Subsequent to the documentary and "hands on" forays into Nevada by the FTB and defendants, the FTB also sent correspondence, rather than "quasi-subpoenas," to Nevada Governor Bob Miller, Nevada Senator Richard Bryan and other government officials and agencies seeking information regarding plaintiff and his residency in Nevada. Plaintiff is further informed and believes, and therefore alleges, that the FTB intentionally sent unauthorized "quasi-subpoenas" (i.e., "Demand to Furnish Information") to private individuals and businesses in a successful attempt to coerce their cooperation through deception

and the pretense of an authoritative demand, while on the other hand, sending respectful letter requests for information to Nevada governmental agencies and officials who undoubtedly would have recoiled at the attempt by the FTB to exercise extraterritorial authority in Nevada through the outrageous means of the bogus subpoenas.

15. Plaintiff neither authorized the FTB's aforementioned documentary and pretentious forays into Nevada, nor was plaintiff ever aware that such information was being sought in such a manner until well after the "quasi-subpoenas" had been issued and the responses received. Similarly, plaintiff had no knowledge of the FTB and defendants' excursions to Las Vegas to investigate plaintiff or the FTB's correspondence with Nevada government agencies and officials until well after such contacts had taken place. Upon information and belief, plaintiff alleges that all of the above-described activities were calculated to enable the FTB to develop a colorable basis for assessing a huge tax against plaintiff despite the obvious fact that the FTB was proceeding against a bona fide resident of Nevada.

ASSESSMENT FOR 1991

16. On April 23, 1996, after the FTB had completed its audit and investigation of the 1991 Return, the FTB sent a Notice of Proposed Assessment (i.e., a formal notice that taxes are owed) to plaintiff in which the FTB claimed plaintiff was a resident of California – not Nevada – until April 3, 1992. The FTB therefore assessed plaintiff's California state income tax for the period of September 26 through December 31 of 1991 in a substantial amount.

Moreover, the FTB also assessed a penalty against plaintiff in an amount almost equal to the assessed tax after summarily concluding that plaintiff's non-payment of the assessed tax, based upon his asserted residency in Nevada and non-residency in California, was fraudulent.

17. Plaintiff, who demonstrably is and was at all times pertinent hereto, a bona fide resident of Nevada should not be forced into a California forum to seek relief from the unjust and tortious attempts by the FTB to extort unlawful taxes from this Nevada resident. Plaintiff avers that the manufactured issue of his residency in Nevada for the period of September 26 through December 31 of 1991 should be determined in Nevada, the state of plaintiff's residence. The FTB is in effect attempting to impose an "exit tax" on plaintiff by coercing him into administrative procedures and possible future court action in California. The FTB has arbitrarily, maliciously and without support in law or fact, asserted that plaintiff remained a California resident until he purchased and closed escrow on a new home in Las Vegas on April 3, 1992. In a word, the FTBs prolonged and monumental efforts to find a way – any way – to effectively assess additional income taxes against plaintiff after he changed his residency from California to Nevada is based on governmental greed arising from the FTBs eventual awareness of the financial success plaintiff has realized since leaving California and becoming a bona fide resident of the State of Nevada. The aforesaid date of Nevada residency accepted by the FTB with respect to the 1991 Report is over six months after plaintiff moved to Nevada with the intent to stay

and began, he thought, to enjoy all the privileges and advantages of residency in his new state.

THE FTB'S CONTINUING PURSUIT OF PLAINTIFF IN NEVADA

18. On or about April 1, 1996, plaintiff received formal notice that the FTB had commenced an investigation into the 1992 tax year and that its tentative determination was that plaintiff would also be assessed California state income taxes for the period of January 1 through April 3 of 1992.

19. On or about April 10, 1997 and May 12, 1997 respectively, plaintiff received notices from the FTB that it would be issuing a formal "Notice of Proposed Assessment" in regard to the 1992 tax year in which it will seek back taxes from plaintiff for income earned during the period of January 1 through April 2, 1992 and in addition would seek penalties for plaintiff's failure to file a state income tax return for 1992.

20. Prior to the FTB sending the formal Notice of Proposed Assessment for the 1992 tax year, a representative of the FTB stated to one of plaintiff's representatives that disputes over such assessments by the FTB always settle at this stage as taxpayers do not want to risk their personal financial information being made public. Plaintiff understood this statement to be a strong suggestion by the FTB that he settle the dispute by payment of some portion of the assessed taxes and penalties. Plaintiff refused, and continues to refuse to do so, as he has not been a resident of California since his move to Nevada on September 26, 1991, and it remains clear to him that the FTB is engaging in its highhanded tactics to extort

"taxes and penalties" from him that he does not legally or morally owe.

21. On or about August 14, 1997, plaintiff received a formal Notice of Proposed Assessment for 1992. Despite the FTB's earlier written statements and findings that plaintiff became a Nevada resident at least as of April 3, 1992 and its statement in such Notice of Proposed Assessment that "We [the FTB] consider you to be a resident of this state [California] through April 2, 1992," such notice proceeded to assess California state income taxes on plaintiff's income for the **entire year of 1992**. Specifically, the FTB assessed plaintiff's state income taxes for 1992 in an amount five times greater than that for 1991, assessed plaintiff a penalty almost as great as the assessed tax for alleged fraud in claiming he was a Nevada resident during 1992, and stated that interest accrued through August 14, 1997 (roughly the equivalent of the penalty) was also owed on the assessed tax and penalty. In short, the State of California, through the FTB, sent plaintiff a bill for the entire 1992 tax year, which was fourteen times the amount of tax it initially assessed for 1991, and in so doing asserted that plaintiff was "a California resident for the entire year." Without explanation the FTB ignored its earlier finding and written acknowledgment that plaintiff was a Nevada resident at least as of April 3, 1992. This outrage is a transparent effort to extort substantial sums of money from a Nevada resident.

22. Plaintiff is informed and believes, and therefore alleges, that the FTB intends to engage in a repeat of the "hands on," extraterritorial investigations directed at plaintiff within the State of

Nevada in an effort to conjure up a colorable basis for justifying its frivolous, extortionate Noticed of Proposed Assessment for the 1992 tax year.

23. Plaintiff is informed and believes, and therefore alleges, that the FTB may continue to assess plaintiff's California state income taxes for the years 1993, 1994, 1995, 1996 and beyond since the FTB has now disregarded its own conclusion regarding plaintiff's residency in Nevada as of April 3, 1992, and is bent on charging him with a staggering amount of taxes, penalties and interest irrespective of his status as a bona fide resident of Nevada. It appears from its actions concerning plaintiff, that the FTB has embraced a new theory of liability that in effect declares "once a California resident always a California resident" as long as the victim continues to generate significant amounts of income. Thus, the FTB has raised an invisible equivalent of the iron curtain that prohibits such residents from ever leaving the taxing jurisdiction of the FTB.

THE FTB'S MOTIVE

24. Plaintiff is informed and believes, and therefore alleges, that the FTB has no credible, admissible evidence that plaintiff was a California resident at anytime after September of 1991, despite the FTB's exhaustive extraterritorial investigations in Nevada. The FTB has acknowledged in its own reports that plaintiff sold his California home on October 1, 1991, that plaintiff rented an apartment in Las Vegas from November 1991 until April 1992 and that plaintiff purchased a home in Las Vegas in April 1992.

25. Plaintiff is informed and believes, and therefore alleges, that the assessments by the FTB against plaintiff for 1991 and 1992 result from the fact that almost two years after plaintiff moved from California to Nevada an FTB investigator read a magazine article about plaintiff's wealth and the FTB thereafter launched its investigation in the hope of extracting a significant settlement from plaintiff. Plaintiff is further informed and believes, and therefore alleges, that the FTB has assessed a fraud penalty against plaintiff for the 1991 tax year and issued a Notice of Proposed Assessment assessing plaintiff for the entire 1992 tax year and a fraud penalty for the same year to intimidate plaintiff and coerce him into paying some significant amount of tax for income earned after September 26, 1991, despite its awareness that plaintiff actually became a Nevada resident at that time. Plaintiff alleges that the FTB's efforts to coerce plaintiff into sharing his hard-earned wealth despite having no lawful basis for doing so, constitutes malice and oppression.

JURISDICTION

26. This court has personal jurisdiction over the FTB pursuant to Nevada's "long-arm" statute, NRS 14.065 *et seq.*, because of the FTB's tortious extraterritorial contacts and investigatory conduct within the State of Nevada ostensibly as part of its auditing efforts to undermine plaintiff's status as a Nevada resident, but in reality to create a colorable basis for maintaining that plaintiff continued his residency in California during the period September 26, 1991 to December 31, 1991 and beyond.

27. Plaintiff is informed and believes, and therefore alleges, that the FTB has a pattern and practice of entering into Nevada to investigate Nevada residents who were formerly residents of California, and then assessing such residents California state income taxes for time periods subsequent to the date when such individuals moved to and established residency in Nevada.

FIRST CAUSE OF ACTION
(FOR DECLARATORY RELIEF)

28. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 27 above as though set forth herein verbatim.

29. Pursuant to California law, in determining whether an individual was a resident of California for a certain time period thereby making such individual's income subject to California state income tax during such period, the individual must have been either domiciled in California during such period for "other than a temporary or transitory purpose." *See* Cal. Rev. & Tax Code § 17014. The FTB's own regulations and precedents require that it apply certain factors in determining an individual's domicile and/or whether the individual's presence in California (or outside of California) was more than temporary or transitory.

A. Domicile

Domicile is determined by the individual's physical presence in California **with intent to stay** or if absent temporarily from California an **intent to return**. Such intent is determined by the acts and conduct of the individual such as: (1) where the individual is registered to vote and votes; (2) location

of the individual's permanent home; (3) comparative size of homes maintained by the individual in different states; (4) where the individual files federal income tax returns; (5) comparative time spent by the individual in different states; (6) cancellation of the individual's California homeowner's property tax exemption; (7) obtaining a driver's license from another state; (8) registering a car in another state; (9) joining religious, business and/or social organizations in another state; and (10) establishment of a successful business in another state by an individual who is self employed.

B. Temporary or Transitory Purpose

The following contacts which are similar although not identical to those used to determine domicile are important in determining whether an individual was in California (or left California) for a temporary or transitory purpose: (1) physical presence of the individual in California in comparison to the other state or states; (2) establishment of a successful business in another state by an individual who is self employed; (3) extensive business interest outside of California and active participation in such business by the individual; (4) banking activity in California by the individual is given some, although not a great deal of, weight; (5) rental of property in another state by the individual; (6) cancellation of the individual's California homeowner's property tax exemption; (7) hiring professionals by the individual located in another states; (8) obtaining a driver's license from another states; (9) registering a car in another state; (10) joining religious, business, and/or social

organizations in another state; and (11) where the individual is registered to vote and votes.

30. The FTB's assessment of taxes and a penalty of 1991 is based upon the FTB's conclusion in the first instance that plaintiff did not become a resident of Nevada until April 3, 1992, the date on which plaintiff closed escrow on a new home in Las Vegas. In coming to such a conclusion, the FTB discounted or refused to consider a multitude of evidentiary facts which contradicted the FTB's conclusion, and were the type of facts the FTB's own regulations and precedents require it to consider. Such facts include, but are not limited to, the following: (1) plaintiff sold his California home on October 1, 1991 until April of 1992; (2) plaintiff rented and resided at an apartment in Las Vegas from October 1, 1991 until April of 1992; (3) plaintiff registered to vote, and obtained a Nevada's driver's license (thereby relinquishing his California driver's license), and joined a Las Vegas religious organization in November of 1991; (4) plaintiff terminated his California home owner's exemption effective October 1, 1991; (5) plaintiff began actively searching for a house to buy in Las Vegas, and submitted numerous offers on houses in Las Vegas, commencing in December of 1991; (6) plaintiff's offer to purchase a home in Las Vegas was accepted in March of 1992 and escrow closed on such purchase on April 3, 1992; and (7) plaintiff's new home in Las Vegas was substantially larger than the home in Southern California, which he sold in October of 1991.

31. An actual controversy exists as to whether plaintiff was a full-time resident of Nevada – not California – commencing on September 26, 1991

through December 31, 1991 and continuing thereafter through the year 1992 and beyond. Plaintiff contends that under either Nevada or California law, or both, he was a full-time, bona fide resident of Nevada throughout the referenced periods and down to the present, and that the FTB ignored its own regulations and precedents in finding to the contrary, and that the FTB has no jurisdiction to impose a tax obligation on plaintiff during the contested periods. Plaintiff also contends that the FTB had no authority to conduct an extraterritorial investigation of plaintiff in Nevada and no authority to propound "quasi-subpoenas" to Nevada residents and businesses, thereby seeking to coerce the cooperation of said Nevada residents and businesses through an unlawful and tortious deception, to reveal information about plaintiff. Plaintiff is informed and believes, and therefore alleges, that the FTB contends in all respects to the contrary.

32. Plaintiff therefore requests judgment of this Court declaring and confirming plaintiff's status as a full-time, bona fide resident of the State of Nevada effective from September 26, 1991 to the present, and for judgment declaring the FTB's extraterritorial investigatory excursions into Nevada, and the submission of "quasi-subpoenas" to Nevada residents without approval from a Nevada court or governmental agency, as alleged above, to be without authority and violative of Nevada's sovereignty and territorial integrity.

SECOND CAUSE OF ACTION
(FOR INVASION OF PRIVACY – UNREASONABLE INTRUSION UPON THE SECLUSION OF ANOTHER)

33. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 27, and 29 through 31 above, as though set forth herein verbatim.

34. Plaintiff is informed and believes, and therefore alleges, that neighbors, businesses, government officials and others within Nevada with whom plaintiff has had and would reasonably expect in the future to have social or business interactions, were approached and questioned by the FTB and defendants who disclosed or implied that plaintiff was under investigation in California, and otherwise acted in such a manner as to cause doubts to arise concerning plaintiff's integrity and moral character. Moreover, as part of the audit/investigation in regard to the 1991 Return, plaintiff turned over to the FTB highly personal and confidential information with the understanding that it would remain confidential. The FTB even noted in its own internal documentation that plaintiff had a significant concern in regard to the protection of his privacy in turning over such information. At the time this occurred, plaintiff was still hopeful that the FTB was actually operating in good faith, a proposition that, as noted throughout this complaint, proved to be utterly false.

35. Plaintiff is informed and believes, and therefore alleges, that the FTB and defendants nevertheless violated plaintiff's right to privacy in regard to such information by revealing it to third

parties and otherwise conducting an investigation in Nevada through which the FTB and defendants revealed to third parties personal and confidential information, which plaintiff had every right to expect would not be revealed to such parties.

36. Plaintiff is informed and believes, and therefore alleges, that the FTB and defendants' extensive probing and investigation of plaintiff, including their actions both occurring within Nevada and directed to Nevada from California, were performed with the intent to harass, annoy, vex, embarrass and intimidate plaintiff such that he would eventually enter into a settlement with the FTB concerning his residency during the disputed time periods and the taxes and penalties allegedly owed. Such conduct by the FTB and defendants did in fact harass, annoy, vex and embarrass Hyatt, and syphon his time and energies from the productive work in which he is engaged.

37. Plaintiff is informed and believes, and therefore alleges, that the FTB and defendants through their investigative actions, and in particular the manner in which they were carried out in Nevada, intentionally intruded into the solitude and seclusion which plaintiff had specifically sought by moving to Nevada. The intrusion by the FTB and defendants was such that any reasonable person, including plaintiff, would find highly offensive.

38. As a direct, proximate, and foreseeable result of the FTB and defendants' aforementioned invasion of plaintiff's privacy, plaintiff has suffered actual and consequential damages in total amount in excess of $10,000.

39. Plaintiff is informed and believes, and therefore alleges, that said invasion of plaintiff's privacy was intentional, malicious, and oppressive in that such invasion was despicable conduct by the FTB and defendants entered into with a willful and conscious disregard of plaintiff's rights, and the efficacious intent to cause him injury. Plaintiff is therefore entitled to an award of punitive damages against the FTB and defendants in an amount sufficient to satisfy the purposes for which such damages are awarded.

THIRD CAUSE OF ACTION
(FOR INVASION OF PRIVACY – UNREASONABLE PUBLICITY GIVEN TO PRIVATE FACTS)

40. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 27, 29 through 31, and 34 through 37, above, as though set forth herein verbatim.

41. As set forth above, plaintiff revealed to the FTB highly personal and confidential information at the request of the FTB as an ostensible part of its audit and investigation into plaintiff's residency during the disputed time periods. Plaintiff had a reasonable expectation that said information would be kept confidential and not revealed to third parties and the FTB and defendants knew and understood that said information was to be kept confidential and not revealed to third parties.

42. The FTB and defendants, without necessity or justification, nevertheless disclosed to third parties in Nevada certain of plaintiff's personal and confidential information which had been cooperatively

disclosed to the FTB by plaintiff only for the purposes of facilitating the FTB's legitimate auditing and investigative efforts.

43. As a direct, proximate, and foreseeable result of the FTB's aforementioned invasion of plaintiff's privacy, plaintiff has suffered actual and consequential damages in a total amount in excess of $10,000.

44. Plaintiff is informed and believes, and therefore alleges, that said invasion of plaintiff's privacy was intentional, malicious, and oppressive in that such invasion constituted despicable conduct by the FTB and defendants entered into with a willful and conscious disregard of the rights of plaintiff. Plaintiff is therefore entitled to an award of punitive or exemplary damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

FOURTH CAUSE OF ACTION
(FOR INVASION OF PRIVACY – CASTING PLAINTIFF IN FALSE LIGHT)

45. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 27, 29 through 31, 34 through 37, and 41 and 42, above, as if set forth herein verbatim.

46. By conducting interviews and interrogations of Nevada residents and by issuing unauthorized "Demands to Furnish Information" as part of their investigation in Nevada of plaintiff's residency, the FTB and defendants invaded plaintiff's right to privacy by stating or insinuating to said Nevada residents that plaintiff was under investigation in

California, thereby falsely portraying plaintiff as having engaged in illegal and immoral conduct, and decidedly casting plaintiff's character in a false light.

47. The FTB and defendants' conduct in publicizing its investigation of plaintiff cast plaintiff in a false light in the public eye, thereby adversely compromising the attitude of those who know or would, in reasonable likelihood, come to know Gil Hyatt because of the nature and scope of his work. Such publicity of the investigation was offensive and objectionable to plaintiff and was carried out for other than honorable, lawful, or reasonable purposes. Said conduct by the FTB and the defendants was calculated to harm, vex, annoy and intimidate plaintiff, and was not only offensive and embarrassing to plaintiff, but would have been equally so to any reasonable person of ordinary sensibilities similarly situated, as the conduct could only serve to damage plaintiff's reputation.

48. As a direct, proximate, and foreseeable result of the FTB and defendants' aforementioned invasion of plaintiff's privacy, plaintiff has suffered actual and consequential damages in a total amount in excess of $10,000.

49. Plaintiff is informed and believes, and therefore alleges, that said invasion of plaintiff's privacy was intentional, malicious, and oppressive in that such invasion of privacy was despicable conduct by the FTB and defendants, entered into with a willful and conscious disregard of the rights of plaintiff. Plaintiff is therefore entitled to an award of exemplary or punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

FIFTH CAUSE OF ACTION
(FOR THE TORT OF OUTRAGE)

50. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 27, 29 through 31, 34 through 37, 41 and 42, and 46 and 47, above, as if set forth herein verbatim.

51. The clandestine and reprehensible manner in which the FTB and defendants carried out their investigation in Nevada of plaintiff's Nevada residency under the cloak of authority from the State of California, but without permission from the State of Nevada, and the FTB and defendants' apparent intent to continue to investigate and assess plaintiff's staggeringly high California state income taxes, interest, and penalties for the entire year of 1992 – and possibly continuing into future years – despite the FTB's own finding that plaintiff was a Nevada resident at least as of April of 1992, was, and continues to be, extreme, oppressive and outrageous conduct. The FTB has, in every sense, sought to hold plaintiff hostage in California, disdaining and abandoning all reason in its reprehensible, all-out effort to extort significant amounts of plaintiff's income without a basis in law or fact. Plaintiff is informed and believes, and therefore alleges, that the FTB and defendants carried out their investigation in Nevada for the ostensible purpose of seeking truth concerning his place of residency, but the true purpose of which was to so harass, annoy, embarrass, and intimidate plaintiff, and to cause him such severe emotional distress and worry as to coerce him into paying significant sums to the FTB irrespective of his

demonstrably bona fide residence in Nevada throughout the disputed periods. As a result of such extremely outrageous and oppressive conduct on the part of the FTB and defendants, plaintiff has indeed suffered fear, grief, humiliation, embarrassment, anger, and a strong sense of outrage that any honest and reasonably sensitive person would feel if subjected to equivalent unrelenting, outrageous personal threats and insults by such powerful and determined adversaries.

52. As a direct, proximate, and foreseeable result of the FTB and defendants' aforementioned extreme, unrelenting, and outrageous conduct, plaintiff has suffered actual and consequential damages in a total amount in excess of $10,000.

53. Plaintiff is informed and believes, and therefore alleges, that said extreme, unrelenting, and outrageous conduct was intentional, malicious, and oppressive in that it was despicable conduct by the FTB and defendants, entered into with a willful and conscious disregard of plaintiff's rights. Plaintiff is therefore entitled to an award of exemplary or punitive damages in an amount sufficient to satisfy the purposes for which such damages were awarded.

SIXTH CAUSE OF ACTION
(FOR ABUSE OF PROCESS)

54. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs through 27, 29 through 31, 34 through 37, 41 and 42, 46 and 47, and 51 and 53, above, as if set forth herein verbatim.

55. Despite plaintiff's ongoing effort, both personally and through his professional

representatives, to reasonably provide the FTB with every form of information it requested in order to convince the FTB that plaintiff has been a bona fide resident of the State of Nevada since September 26, 1991, the FTB has willfully sought to extort vast sums of money from plaintiff through administrative proceedings unrelated to the legitimate taxing purposes for which the FTB is empowered to act as an agency of the government of the State of California; said administrative proceedings have been lawlessly and abusively directed into the State of Nevada through means of administrative "quasi-subpoenas" that have been unlawfully utilized in the attempt to extort money from plaintiff as aforesaid.

56. The FTB, without authorization from any Nevada court or governmental agency, directed facially authoritative **"DEMAND[S] TO FURNISH INFORMATION,"** also referred to herein by plaintiff as "quasi-subpoenas," to various Nevada residents, professionals and businesses *requiring* specific information about plaintiff. The aforesaid "Demands" constituted an actionable abuse of process with respect to plaintiff for the following reasons:

(a) Despite the fact that each such "Demand" was without force of law, they were specifically represented to be "Authorized by California Revenue & Taxation Code Section 19504 (formerly 19254 (a) and 26423 (a)[])," sent out by the State of California Franchise Tax Board on behalf of "The People of the State of California" to each specific recipient, and were prominently identified as relating to "*In the Matter of*: Gilbert Hyatt;" Plaintiff was also identified by his social security number and in certain instances by his

actual home address in violation of express promises of confidentiality by the FTB; although the aforesaid "Demands" were not directed to plaintiff, the perversion of administrative process which they represented was motivated by the intent to make plaintiff both the target and the victim of the illicit documents;

(b) Each such "Demand" was unlawfully used in order to further the effort to extort monies from plaintiff that could not be lawfully and constitutionally assessed and collected because plaintiff was a bona fide resident of Nevada throughout the periods of time the FTB has sought to collect taxes from him, and plaintiff has not generated any California income during any of the pertinent time periods;

(c) Each such "Demand" was submitted to Nevada residents, professionals and businesses for the ulterior purpose of coercing plaintiff into paying extortionate sums of money to the FTB without factual or constitutional justification, and without the intent or prospect of resolving any legal dispute; indeed, as noted above, many of the "Demands" were used as vehicles for publicly violating express promises of confidentiality by the FTB, thus adding to the pressure and anxiety felt by plaintiff as intended by the FTB in furtherance of its unlawful scheme;

(d) Although the FTB was allegedly investigating plaintiff for the audit years 1991 and 1992, such audits were and are a "sham" asserted for the purposes of attempting to extort non-owed monies from plaintiff, as demonstrated by the fact that several of the "Demands" indicated that they were issued to

secure information (about plaintiff) "for investigation, audit or collection purposes pertaining to the above-named taxpayer for the years indicated," and then proceeded to demand information pertaining to the years 1993, 1994, and 1995 "to present;"

(e) Sheila Cox, a tax auditor for the FTB who has invested hundreds of hours in attempting to gain unlawful access to plaintiff's wallet through means of extortion, was the "Authorized Representative" who issued these abusive, deceptive and outrageous "Demands;" and each of the "Demands" or quasi-subpoenas constituted legal or administrative process targeting plaintiff that was not proper in the regular conduct of the FTBs administrative proceedings against plaintiff;

(f) That each "Demand" was selectively, deliberately and calculatingly issued to Nevada recipients who Sheila Cox and the FTB thought would most likely respond to the authoritative nature and language of the documents, as opposed to courteous letters of inquiry that tax auditors and the FTB sent to certain governmental agencies and officials who were viewed as potential sources of criticism or trouble if confronted with the deceptive attempt to exact sensitive information from them through means of facially coercive documents purporting to have extraterritorial effect based upon the authority of California law;

(g) In conjunction with and in addition to the issuance of the aforesaid "Demands," and the personal, investigative forays into Nevada by FTB agents, as detailed above, representative of the FTB, Anna Jovanovich, stated to plaintiff's tax counsel,

Eugene Cowan, Esq., that at this "stage" of the proceedings, these types of disputes involving wealthy or well-known taxpayers over their contested assessments almost always settle because these taxpayers do not want to risk having their personal financial information being made public, thus the "suggestion" by Ms. Jovanovich concerning settlement was made with the implied threat that the FTB would release highly confidential financial information concerning plaintiff if he refused to settle, another deceptive and improper abuse of the proceedings instigated by the FTB to coerce settlement by plaintiff;

(h) In conjunction with and in addition to the issuance of the aforesaid "Demands" and the other improper methods of exerting coercive pressure on plaintiff to pay the FTB money which it has sought to secure by extortion, and without justification in law or equity, the FTB compounded its abuse of its administrative powers by assessing plaintiff huge penalties based on patently false and frivolous accusations, including but not limited to, the concealment of assets to avoid taxes, plus the outrageous contention that plaintiff was fraudulently claiming Nevada residency;

(i) The FTB and Sheila Cox knew that they had no authority to issue **"DEMAND[S] TO FURNISH INFORMATION"** to any Nevada resident, business or entity, and that it was gross abuse of Section 19504 of the California Revenue and Taxation Code, under which the aforesaid Demands were purportedly authorized that the aforesaid section of the California Revenue and Taxation Code contains no provision that remotely purports to empower or authorize the FTB to

issue such facially coercive documents to residents and citizens of Nevada in Nevada; and despite knowing that it was highly improper and unlawful to attempt to deceive Nevada citizens and businesses into believing that they were under compulsion to respond to the "Demands" under pain of some type of punitive consequences, Sheila Cox and the FTB nevertheless deliberately and calculatingly abused the process authorized by the aforesaid section of the California Revenue and Taxation Code in order to promote their attempts to extort money from plaintiff;

(j) From the outset, the determination by Sheila Cox and the FTB to utilize the **"DEMAND[S] TO FURNISH INFORMATION"** in Nevada, constituted a deliberate, unlawful, and despicable decision to embark on a course of concealment in the effort to produce material information, pressure and sources of distortion that would culminate in a combination of sufficient strength and adversity to force plaintiff to yield to the FTB's extortionate demands for money; and the course of concealment consisted of concealing from plaintiff the fact that the aforesaid "Demands" were being sent to Nevada residents, professional persons and businesses, and in hiding from the recipients of the "Demands" the fact that despite their stated support in California law, the documents had no such support and were deceitful and bogus documents; and

(k) The FTB further abused its legal administrative process by issuing the bogus quasi-subpoenas to Nevada residents, professionals, and businesses without providing plaintiff with notice of such discovery as required by the due process clause

of Article 1, Section 8 of the Nevada Constitution and the applicable Nevada Rules of Civil Procedure.

57. As a direct, proximate and foreseeable result of the FTB and defendants' intentional and malicious abuse of the administrative processes, which the FTB initiated and unrelentingly pursued against plaintiff, as aforesaid, plaintiff has suffered actual and consequential damages, including but not limited to fear, anxiety, mental and emotional distress in an amount in excess of $10,000.

58. Plaintiff is informed and reasonably believes, and therefore alleges, that said abuse of the administrative processes initiated and pursued against plaintiff was willful, intentional, malicious and oppressive in that it represented a deliberate effort to unlawfully extort substantial sums of money from plaintiff that could not be remotely justified by any honorable effort within the purview of the powers conferred upon the FTB by the State of California relating to all aspects of taxation, including the powers of investigation, assessment and collection. Plaintiff is therefore entitled to an award of exemplary or punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

SEVENTH CAUSE OF ACTION
(FOR FRAUD)

59. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 27, 29 through 31, 34 through 37, 41 and 42, 46 and 47, 51 and 53, 54 through 56, including subparagraphs (a) through (k) of the latter paragraph, above, as if set forth herein.

60. Plaintiff, who prior to September 26, 1991 had been a long-standing resident and taxpayer of the State of California placed trust and confidence in the bona fides of the FTB as the taxing authority of the State of California when the FTB first contacted him on or about June 1993 regarding the 1991 audit of his California tax obligation; by the time of this first contact, plaintiff had become a recognized and prominent force in the computer electronics industry, and he was vitally interested in maintaining both his personal and business security as well as the integrity of his reputation as a highly successful inventor and owner and licensor of significantly valuable patents.

61. During the course of seeking information and documents relating to the 1991 "audit," and repeatedly thereafter, the FTB absolutely promised to maintain in the strictest of confidence, various aspects of plaintiff's circumstances, including, but not limited to, his personal home address and his business and financial transactions and status; and plaintiff's professional representatives took special measures to maintain the confidentiality of plaintiff's affairs including and especially obtaining solemn commitments from FTB agents to maintain in the strictest of confidence (assured by supposedly secure arrangements) all of plaintiff's confidential information and documents; and the said confidential information and documents were given to the FTB in return for its solemn guarantees and assurances of confidentiality as aforesaid.

62. Despite the aforesaid assurances and representations of confidentiality by the FTB, said assurances and representations were false, and the

FTB knew they were false or believed they were false, or were without a sufficient basis for making said assurances and representations Even as the FTB and its agents were continuing to provide assurances of confidentiality to plaintiff and his professional representatives, and without notice to either, Sheila Cox and the FTB were in the process of sending the bogus **"DEMAND[S] TO FURNISH INFORMATION"** to the utility companies in Las Vegas which demonstrated that the aforesaid assurances and representations were false, as the FTB revealed plaintiff's personal home address in Las Vegas, thus making this highly sensitive and confidential information essentially available to the world through access to the databases maintained by the utility companies. Specific representative indices of the FTBs fraud include:

(a) In a letter by Eugene Cowan, Esq., a tax attorney representing plaintiff, dated November 1, 1993 and addressed to and received by Mr. Marc Shayer of the FTB, Mr. Cowan indicated that he was enclosing a copy of plaintiff's escrow instructions concerning the purchase of his Las Vegas residence, and that **"[p]er our discussion, the address of the Las Vegas home has been deleted."** Mr. Cowan ended his letter with the following sentence: **"As we discussed, the enclosed materials are highly confidential and we do appreciate your utmost care in maintaining their confidentiality."** This letter is contained within the files of the FTB, and the FTB noted in its chronological list of items the receipt of the aforesaid escrow instructions with "Address deleted;"

(b) In the FTB's records concerning its Residency Audit 1991 of Gilbert P. Hyatt, the following pertinent excerpts of notations exist:

(i) 2/17/95 – "[Eugene Cowan] wants us to make as few copies as possible, as he is concerned for the privacy of the taxpayer. I [the FTB agent] explained that we will need copies, as the cases often take long time to complete and that cases which go to protest can take several years to resolve[;]

(ii) 2/21/95 – "LETTER FROM REPRESENTATIVE MIKE KERN Earlier document request was transferred to Eugene Cowan due to the sensitive and confidential nature of documentation[;]"

(iii) 2/23/95 – Meeting [between Sheila Cox and] ... Eugene Cowan ... Mr. Cowan stressed that the taxpayer is very worried about his privacy and does not wish to give us copies of anything. I [Sheila Cox] discussed with him our Security and Disclosure policy. He said that the taxpayer is fearful of kidnapping." [sic] This latter reference to "kidnaping" is a fabrication by Sheila Cox in an apparent effort to downplay in the FTBs records, the importance of plaintiff's privacy concerns as those of an eccentric or paranoid; in reality the FTB, Sheila Cox and other FTB agents knew that plaintiff had genuine cause for being concerned about industrial espionage and other risks associated with the magnitude of plaintiff's position in the computer electronics industry;

(iv) On February 28, 1995, Eugene Cowan, Esq. sent a letter to Sheila Cox of the FTB

enclosing copies of various documents. He then stated: "As previously discussed with you and other Franchise Tax Board auditors, all correspondence and materials furnished to the Franchise Tax Board by the taxpayer are highly confidential. It is our understanding that you will retain these materials in locked facilities with limited access[;]" and

(v) 8/31/95 – In a letter sent to Eugene Cowan, Esq. by Sheila Cox on 8/31/95 regarding the 1991 audit, Cox stated: "The FTB acknowledges that the taxpayer is a private person who puts significant effort into protecting his privacy[;]"

(c) Despite the meeting Sheila Cox had with Mr. Cowan on February 23, 1995, and Mr. Cowan's expression of plaintiff's concern for his privacy, and the explanation by Cox of the FTB's stringent Security and Disclosure policy (the violation of which may subject the offending FTB employee to criminal sanctions or termination); and despite Mr. Cowan's letter to Sheila Cox of February 28, 1995, discussing the highly confidential nature of "all correspondence and materials furnished to the Franchise Tax Board" and his and plaintiff's "understanding that you will retain these materials in locked facilities with limited access" (thereby again underscoring the understanding that all information and documents provided to the FTB would be confidential, including plaintiff's personal residence address), Sheila Cox sent **"DEMAND TO FURNISH INFORMATION"** to the Las Vegas utility companies including Southwest Gas Corp., Silver State Disposal Service and Las Vegas

Valley Water District, providing each such company with the plaintiff's personal home address, thereby demonstrating disdain for plaintiff, his privacy concerns and the FTBs assurances of confidentiality.

63. Plaintiff further alleges that from the very beginning of the FTB's notification to plaintiff and his professional representatives of its intention to audit his 1991 California taxes, express and implied assurances and representations were made to plaintiff through his representatives, that the audit was to be an objective inquiry into the status of his 1991 tax obligation; and that upon information and belief, based on the FTB's subsequent actions, the aforesaid representations were untrue, as the FTB and certain of its agents were determined to share in the highly successful produce of plaintiff's painstaking labor through means of truth-defying extortion. Indications of this aspect of the fraud perpetrated by the FTB include:

(a) Despite plaintiff's delivery of copies of documentary evidence of the sale of his California residence on October 1, 1991 to his business associate and confidant, Grace Jeng, to the FTB, the FTB has contended that the aforementioned sale was a sham, and therefore evidence of plaintiff's continued California residency and his attempt to evade California income tax by fraud;

(b) Plaintiff supplied evidence to the FTB that he declared his sale, and income and interest derived from the sale of his LaPalma, California home on his 1991 income tax return, factors that were ignored by the FTB as it concluded that since the grant deed on the home was not recorded until June, 1993 the sale

was a sham, as aforesaid, and a major basis for assessing fraud penalties against plaintiff as a means of building the pressure for extortion;

(c) Plaintiff, aware of his own whereabouts and domicile, alleges that the FTB has no credible evidence, and can indeed provide none, that would indicate that plaintiff continued to own or occupy his former home in La Palma, California which he sold to his business associate and confidant, Grace Jeng on October 1, 1991;

(d) After declaring plaintiff's sale of his California home on October 1, 1991 a "sham," the FTB later declined to compare the much less expensive California home with the home plaintiff purchased in Las Vegas, Nevada (a strong indication favoring Nevada residency) stating that: "Statistics (size, cost, etc.) comparing the taxpayer's La Palma home to his Las Vegas home will not be weighed in the determination [of residency], as the taxpayer **sold the La Palma house on 10/1/91 before he purchased the house in Las Vegas during April of 1992.**" (Emphasis added.); and

(e) The FTB's gamesmanship, illustrated in part, above, constituted an ongoing misrepresentation of a bona fide audit of plaintiff's 1991 tax year, a factor compounded egregiously by the quasi-subpoenas sent to Nevada residents, professionals and businesses without prior notice to plaintiff, and concerning which a number of such official documents indicated that plaintiff was being investigated from January 1995 to the present, all with the intent of defrauding plaintiff into believing that he would owe an enormous tax obligation to the State of California.

64. The FTB and its agents intended to induce plaintiff and his professional representatives to act in reliance on the aforesaid false assurances and representations in order to acquire highly sensitive and confidential information from plaintiff and his professional representatives, and place plaintiff in a position where he would be vulnerable to the FTB's plans to extort large sums of money from him. The FTB was keenly aware of the importance plaintiff assigned to his privacy because of the danger of industrial espionage and other hazards involving the extreme need for security in plaintiff's work and place of residence. The FTB also knew that it would not be able to obtain (at least without the uncertain prospects of judicial intervention) the desired information and documents with which to develop colorable, ostensible tax assessments and penalties against plaintiff, without providing plaintiff and his professional representatives with solemn commitments of secure confidentiality.

65. Plaintiff, reasonably relying on the truthfulness of the aforesaid assurances and representations by the FTB and its agents, and having no reason to believe that an agency of the State of California would misrepresent its commitments and assurances, did agree both personally and through his authorized professional representatives to cooperate with the FTB and provide it with his highly sensitive and confidential information and documents; in fact, plaintiff relied on the false representations and assurances of the FIB and its agents to his extreme detriment.

66. Plaintiff's reasonable reliance on the misrepresentations of the FTB and its agents, as aforesaid, resulted in great damage to plaintiff including damage of an extent and nature to be revealed only to the Court *in camera*, plus actual and consequential damages, including but not limited to fear, anxiety, mental and emotional distress, in total amount in excess of $10,000.

67. The aforesaid misrepresentations by the FTB and its agents were fraudulent, oppressive and malicious. Plaintiff is therefore entitled to an award of exemplary or punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

EIGHTH CAUSE OF ACTION
(FOR NEGLIGENT MISREPRESENTATION)

68. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 27, 29 through 31, 34 through 37, 41 and 42, 46 and 47, 51 and 53, 54 through 56, including subparagraphs (a) through (k) of the latter paragraph, and 60 through 65, above, as if set forth herein verbatim.

69. The FTB, in providing plaintiff and his professional representatives assurances of strict confidentiality with respect to the sensitive and highly confidential information and documents it sought to obtain from plaintiff concerning, allegedly, its 1991 tax year audit of plaintiff, as detailed above, owed a duty to plaintiff to inform him that the FTB, through its agents, may not have been able to maintain, or otherwise would not maintain, the strict confidentiality it had promised plaintiff in order to

secure confidential information and documentation from him.

70. When the FTB revealed to public sources and third persons the highly sensitive and confidential information and documentation it had promised to retain under conditions of strict confidentiality, it breached its duty to plaintiff as described in paragraph 68, above.

71. The relationship between the FTB and plaintiff, was in every sense one of business and trust, as plaintiff was required to employ professional tax attorneys and accountants in order to deal with the FTB's demands, and the FTB's interest was in determining means and methods whereby it could secure revenue from plaintiff. Although plaintiff was forced to deal with the FTB as matter of law, it was clear that the asserted purpose for the mutual intercourse was a determination as to whether plaintiff may have owed additional taxes for calendar year 1991 for which he had enjoyed the benefits provided to him by the State of California. The negotiations that occurred between plaintiff, through his professional representatives, and the FTB and its agents, over terms under which information and documentation would be made available to the FTB were also part of what must assuredly be viewed as a business relationship.

72. As a direct, proximate and foreseeable result of the FTB's breach of duty to plaintiff, as alleged above, plaintiff has sustained great damage, including damage of an extent and nature to be revealed only to the Court *in camera*, plus actual and consequential damages, including but not limited to fear, anxiety,

mental and emotional distress in a total amount in excess of $10,000.

WHEREFORE plaintiff respectfully prays for judgment against the FTB and defendants as follows:

FIRST CAUSE OF ACTION

1. For judgment declaring and confirming that plaintiff is a bona fide resident of the State of Nevada effective as of September 26, 1991 to the present;

2. For judgment declaring that the FTB has no lawful basis for continuing to investigate plaintiff in Nevada concerning his residency between September 26, 1991 through December 31, 1991 or any other subsequent period down to the present, and declaring that the FTB has no right or authority to propound or otherwise issue a "Demand to Furnish Information" or other quasi subpoenas to Nevada residents and businesses seeking information concerning plaintiff;

3. For costs of suit;

4. For reasonable attorneys' fees; and

5. For such other and further relief as the Court deems just and proper.

SECOND CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

3. For costs of suit;

4. For reasonable attorneys' fees; and

5. For such other and further relief as the Court deems just and proper.

THIRD CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

3. For costs of suit;

4. For reasonable attorneys' fees; and

5. For such other and further relief as the Court deems just and proper.

FOURTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

3. For costs of suit;

4. For reasonable attorneys' fees; and

5. For such other and further relief as the Court deems just and proper.

FIFTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

3. For costs of suit;

4. For reasonable attorneys' fees; and

5. For such other and further relief as the Court deems just and proper.

SIXTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

3. For costs of suit;

4. For reasonable attorneys' fees; and

5. For such other and further relief as the Court deems just and proper.

EIGHTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For costs of suit;

3. For reasonable attorneys' fees; and

4. For such other and further relief as the Court deems just and proper.

DATED this 11th day of June 1998.

DISTRICT COURT
CLARK COUNTY, NEVADA

No. A382999

GILBERT P. HYATT,

Plaintiff,

v.

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA, and DOES 1-100, inclusive,

Defendants.

Jury Trial Demanded
Exempt from Arbitration:
Declaratory Relief, Significant Public Policy and Amount in Excess Of $40,000

Filed: February 22, 1999

SECOND AMENDED COMPLAINT

Plaintiff, Gilbert P. Hyatt, in this Second Amended Complaint, complains against defendants, and each of them, as follows:

PARTIES

1. Plaintiff resides in Clark County, Nevada and has done so since September 26, 1991.

2. Defendant Franchise Tax Board of the State of California (hereinafter "FTB") is a governmental agency of the State of California with its principal office located in Sacramento, California, and a district

office located in Los Angeles, California. The FTB's function is to ensure the collection of state income taxes from California residents and from income earned in California by non-residents.

3. The identity and capacities of the defendants designated as Does 1 through 100 are so designated by plaintiff because of his intent by this complaint to include as named defendants every individual or entity who, in concert with the FTB as an employee, representative, agent or independent contractor, committed the tortious acts described in this complaint. The true names and capacities of these Doe defendants are presently known only to the FTB, who committed the tortious acts in Nevada with the assistance of said Doe defendants who are designated by fictitious names only until plaintiff is able, through discovery, to obtain their true identities and capacities; upon ascertaining the true names and capacities of these Doe defendants, plaintiff shall promptly amend this complaint to properly name them by their actual identities and capacities. For pleading purposes, whenever this complaint refers to "defendants," it shall refer to these Doe defendants, whether individuals, corporations or other forms of associations or entities, until their true names are added by amendment along with particularized facts concerning their conduct in the commission of the tortious acts alleged herein.

4. Plaintiff is informed and believes, and on that basis alleges, that defendants, in acting or omitting to act as alleged, acted or omitted to act within the course and scope of their employment or agency, and in furtherance of their employer's or principal's business,

whether the employer or principal be the FTB or some other governmental agency or employer or principal whose identity is not yet known; and that FTB and defendants were otherwise responsible and liable for the acts and omissions alleged herein.

5. This action is exempt from the court-annexed arbitration program, pursuant to Rule 3, because: (1) this is an action for, inter alia, declaratory relief; (2) substantial issues of public policy are implicated concerning the sovereignty of the State of Nevada and the integrity of its territorial boundaries as opposed to governmental agencies of another state who enter Nevada in an effort to extraterritorially, arbitrarily and deceptively enforce their policies, rules and regulations on residents of Nevada in general, and plaintiff Gilbert P. Hyatt in particular; and (3) the sums of money and damages involved herein far exceed the $40,000.00 jurisdictional limit of the arbitration program.

6. Plaintiff hereby requests a jury trial for his Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action.

SUMMARY OF CLAIMS

Plaintiff, by this action, seeks: (1) declaratory relief under NRS 30.010 *et seq.*, to confirm plaintiff's status as a Nevada resident effective as of September 26, 1991 and continuing to the present and, correspondingly, his non-residency during said period in California (FIRST CAUSE OF ACTION) – *re-pled in this Second Amended Complaint to preserve plaintiff's right to appeal the District Court's April 3, 1999 ruling dismissing this cause of action; this cause of action is therefore no longer at issue in the District*

Court; (2) recovery of compensatory and punitive damages against the FTB and the defendants for invasion of plaintiff's right of privacy, including and in particular his informational privacy as well as the FTB's failure to abide by the confidential relationship created by the FTB's request for and receipt of Hyatt's highly personal and confidential information, resulting from their still ongoing investigation in Nevada of plaintiff's residency, domicile and place of abode and causing (a) an unreasonable intrusion upon plaintiff's seclusion (SECOND CAUSE OF ACTION); (b) an unreasonable publicity given to private facts (THIRD CAUSE OF ACTION); (c) casting plaintiff in a false light (FOURTH CAUSE OF ACTION); (3) recovery of compensatory and punitive damages against the FTB and the defendants for their outrageous conduct in regard to their continuing investigation in Nevada of plaintiff's residency, domicile and place of abode, including but not limited to the FTB's failure to abide by the confidential relationship created by the FTB's request for and receipt of Hyatt's highly personal and confidential information (FIFTH CAUSE OF ACTION); (4) recovery of compensatory and punitive damages against the FTB and defendants for an abuse of process (SIXTH CAUSE OF ACTION); (5) recovery of compensatory and punitive damages against the FTB and defendants for fraud, including but not limited to the FTB's failure to abide by the confidential relationship created by the FTB's request for and receipt of Hyatt's highly personal and confidential information (SEVENTH CAUSE OF ACTION); and (6) recovery of compensatory and punitive damages against the FTB and defendants for breach of

confidentiality in regard to the FTB's breach of its duty not to disclose Hyatt's personal and confidential information (EIGHTH CAUSE OF ACTION). The claims specified in this paragraph constitute EIGHT separate causes of action as hereinafter set forth in this complaint.

FACTUAL BACKGROUND

PLAINTIFF'S RESIDENCY IN NEVADA

8. Plaintiff moved to the State of Nevada, County of Clark, and established full-time residency here on September 26, 1991 and has remained a full-time, permanent resident since that time. Prior to his relocation to Nevada, plaintiff resided in Southern California. Plaintiff is a highly successful inventor. Specifically, plaintiff has been granted numerous important patents for a wide range of inventions relating to computer technology. Plaintiff primarily works alone in the creation and development of his inventions and greatly values his privacy both in his personal life and business affairs. After certain of his important inventions were granted patents in 1990, plaintiff began receiving a great deal of unwanted and unsolicited publicity, notoriety and attention. To greater protect his privacy, to enjoy the social, recreational, and financial advantages Nevada has to offer, and to generally enhance the quality of his life and environment, plaintiff relocated to Nevada on September 26, 1991. This move took place after much consideration and almost an entire year of planning.

9. The following events are indicative of the fact that on September 26, 1991, plaintiff commenced both his residency and intent to remain in Nevada, and a continuation of both down to the present: (1) the sale

of plaintiff's California home in October 1991; (2) his renting and residing at an apartment in Las Vegas commencing in October 1991 and continuing until April 1992 when plaintiff closed the purchase of a home in Las Vegas; (3) in November 1991, plaintiff registered to vote in Nevada, obtained a Nevada driver's license, and joined a religious organization in Las Vegas; (4) plaintiff's extensive search, commencing in early October 1991, for a new home in Las Vegas, and in the process utilizing the services of various real estate brokers; (5) during the process of finding a home to purchase, plaintiff made numerous offers to buy; (6) plaintiff's purchase of a new home in Las Vegas on April 3, 1992; (7) plaintiff maintained and expanded his business interests from Las Vegas; and (8) plaintiff has, through the years from September 26, 1991 and down to the present, contacted persons in high political office, in the professions, and other walks of life, as a true Nevada resident of some renown would, not concealing the fact of his Nevada residency. In sum, plaintiff has substantial evidence, both testimonial and documentary, in support of the fact of his full-time residency, domicile and place of abode in Nevada commencing on September 26, 1991 and continuing to the present.

THE FTB AND DEFENDANTS' INVESTIGATION OF PLAINTIFF IN NEVADA

10. Because plaintiff was a resident of California for part of 1991, plaintiff filed a Part-Year state income tax return with the State of California for 1991 (the "1991 Return"). Said return reflects plaintiff's payment of state income taxes to California for income

earned during the period of January 1 through September 26, 1991.

11. In or about June of 1993 – 21 months after plaintiff moved to Nevada – for reasons that have never been specified, but are otherwise apparent, the FTB began an audit of the 1991 Return. In or about July of 1993, as part of its audit, the FTB began to investigate plaintiff by making or causing to be made numerous and continuous contacts directed at Nevada. Initially, the FTB sent requests to Nevada government agencies for information concerning plaintiff – a paper foray that continued for the next several years.

In or about January of 1995, FTB auditors began planning a trip to Las Vegas, the purpose of which was to enhance and expand the scope of their investigation of plaintiff. In March of 1995, the FTB and defendants commenced a "hands on" investigation of plaintiff that included unannounced confrontations and questioning about private details of plaintiff's life. These intrusive activities were directed at numerous residents of Nevada, including plaintiff's current and former neighbors, employees of businesses and stores frequented by plaintiff, and alas, even his trash collector!

13. Both prior and subsequent to the intrusive, "hands on" investigations described in paragraph 12, above, the FTB propounded to numerous Nevada business and professional entities and individual residents of Nevada "quasi-subpoenas" entitled "Demand to Furnish Information" which cited the FTB's authority under California law to issue subpoenas and demanded that the recipients thereof

produce the requested information concerning plaintiff. Plaintiff is informed and believes, and therefore alleges, that the FTB never sought permission from a Nevada court or any Nevada government agency to send such "quasi-subpoenas" into Nevada where, induced by the authoritative appearance of the inquisitions, many Nevada residents and business entities did respond with answers and information concerning plaintiff.

14. Subsequent to the documentary and "hands on" forays into Nevada by the FTB and defendants, the FTB also sent correspondence, rather than "quasi-subpoenas," to Nevada Governor Bob Miller, Nevada Senator Richard Bryan and other government officials and agencies seeking information regarding plaintiff and his residency in Nevada. Plaintiff is further informed and believes, and therefore alleges, that the FTB intentionally sent unauthorized "quasi-subpoenas" (i.e., "Demand to Furnish Information") to private individuals and businesses in a successful attempt to coerce their cooperation through deception and the pretense of an authoritative demand, while on the other hand, sending respectful letter requests for information to Nevada governmental agencies and officials who undoubtedly would have recoiled at the attempt by the FTB to exercise extraterritorial authority in Nevada through the outrageous means of the bogus subpoenas.

15. Plaintiff neither authorized the FTB's aforementioned documentary and pretentious forays into Nevada, nor was plaintiff ever aware that such information was being sought in such a manner until well after the "quasi-subpoenas" had been issued and

the responses received. Similarly, plaintiff had no knowledge of the FTB and defendants' excursions to Las Vegas to investigate plaintiff or the FTB's correspondence with Nevada government agencies and officials until well after such contacts had taken place. Upon information and belief, plaintiff alleges that all of the above-described activities were calculated to enable the FTB to develop a colorable basis for assessing a huge tax against plaintiff despite the obvious fact that the FTB was proceeding against a bona fide resident of Nevada.

ASSESSMENT FOR 1991

16. On April 23, 1996, after the FTB had completed its audit and investigation of the 1991 Return, the FTB sent a Notice of Proposed Assessment (i.e., a formal notice that taxes are owed) to plaintiff in which the FTB claimed plaintiff was a resident of California – not Nevada – until April 3, 1992. The FTB therefore assessed plaintiff's California state income tax for the period of September 26 through December 31 of 1991 in a substantial amount. Moreover, the FTB also assessed a penalty against plaintiff in an amount almost equal to the assessed tax after summarily concluding that plaintiff's non-payment of the assessed tax, based upon his asserted residency in Nevada and non-residency in California, was fraudulent.

17. Plaintiff, who demonstrably is and was at all times pertinent hereto, a bona fide resident of Nevada should not be forced into a California forum to seek relief from the unjust and tortious attempts by the FTB to extort unlawful taxes from this Nevada resident. Plaintiff avers that the manufactured issue

of his residency in Nevada for the period of September 26 through December 31 of 1991 should be determined in Nevada, the state of plaintiff's residence. The FTB is in effect attempting to impose an "exit tax" on plaintiff by coercing him into administrative procedures and possible future court action in California. The FTB has arbitrarily, maliciously and without support in law or fact, asserted that plaintiff remained a California resident until he purchased and closed escrow on a new home in Las Vegas on April 3, 1992. In a word, the FTBs prolonged and monumental efforts to find a way – any way – to effectively assess additional income taxes against plaintiff after he changed his residency from California to Nevada is based on governmental greed arising from the FTBs eventual awareness of the financial success plaintiff has realized since leaving California and becoming a bona fide resident of the State of Nevada. The aforesaid date of Nevada residency accepted by the FTB with respect to the 1991 Report is over six months after plaintiff moved to Nevada with the intent to stay and began, he thought, to enjoy all the privileges and advantages of residency in his new state.

THE FTB'S CONTINUING PURSUIT OF PLAINTIFF IN NEVADA

18. On or about April 1, 1996, plaintiff received formal notice that the FTB had commenced an investigation into the 1992 tax year and that its tentative determination was that plaintiff would also be assessed California state income taxes for the period of January 1 through April 3 of 1992.

19. On or about April 10, 1997 and May 12, 1997 respectively, plaintiff received notices from the FTB

that it would be issuing a formal "Notice of Proposed Assessment" in regard to the 1992 tax year in which it will seek back taxes from plaintiff for income earned during the period of January 1 through April 2, 1992 and in addition would seek penalties for plaintiff's failure to file a state income tax return for 1992.

20. Prior to the FTB sending the formal Notice of Proposed Assessment for the 1992 tax year, a representative of the FTB stated to one of plaintiff's representatives that disputes over such assessments by the FTB always settle at this stage as taxpayers do not want to risk their personal financial information being made public. Plaintiff understood this statement to be a strong suggestion by the FTB that he settle the dispute by payment of some portion of the assessed taxes and penalties. Plaintiff refused, and continues to refuse to do so, as he has not been a resident of California since his move to Nevada on September 26, 1991, and it remains clear to him that the FTB is engaging in its highhanded tactics to extort "taxes and penalties" from him that he does not legally or morally owe.

21. On or about August 14, 1997, plaintiff received a formal Notice of Proposed Assessment for 1992. Despite the FTB's earlier written statements and findings that plaintiff became a Nevada resident at least as of April 3, 1992 and its statement in such Notice of Proposed Assessment that "We [the FTB] consider you to be a resident of this state [California] through April 2, 1992," such notice proceeded to assess California state income taxes on plaintiff's income for the entire year of 1992. Specifically, the FTB assessed plaintiff's state income taxes for 1992 in an amount

five times greater than that for 1991, assessed plaintiff a penalty almost as great as the assessed tax for alleged fraud in claiming he was a Nevada resident during 1992, and stated that interest accrued through August 14, 1997 (roughly the equivalent of the penalty) was also owed on the assessed tax and penalty. In short, the State of California, through the FTB, sent plaintiff a bill for the entire 1992 tax year, which was fourteen times the amount of tax it initially assessed for 1991, and in so doing asserted that plaintiff was "a California resident for the entire year." Without explanation the FTB ignored its earlier finding and written acknowledgment that plaintiff was a Nevada resident at least as of April 3, 1992. This outrage is a transparent effort to extort substantial sums of money from a Nevada resident.

22. Plaintiff is informed and believes, and therefore alleges, that the FTB intends to engage in a repeat of the "hands on," extraterritorial investigations directed at plaintiff within the State of Nevada in an effort to conjure up a colorable basis for justifying its frivolous, extortionate Noticed of Proposed Assessment for the 1992 tax year.

23. Plaintiff is informed and believes, and therefore alleges, that the FTB may continue to assess plaintiff's California state income taxes for the years 1993, 1994, 1995, 1996 and beyond since the FTB has now disregarded its own conclusion regarding plaintiff's residency in Nevada as of April 3, 1992, and is bent on charging him with a staggering amount of taxes, penalties and interest irrespective of his status as a bona fide resident of Nevada. It appears from its actions concerning plaintiff, that the FTB has

embraced a new theory of liability that in effect declares "once a California resident always a California resident" as long as the victim continues to generate significant amounts of income. Thus, the FTB has raised an invisible equivalent of the iron curtain that prohibits such residents from ever leaving the taxing jurisdiction of the FTB.

THE FTB'S MOTIVE

24. Plaintiff is informed and believes, and therefore alleges, that the FTB has no credible, admissible evidence that plaintiff was a California resident at anytime after September of 1991, despite the FTB's exhaustive extraterritorial investigations in Nevada. The FTB has acknowledged in its own reports that plaintiff sold his California home on October 1, 1991, that plaintiff rented an apartment in Las Vegas from November 1991 until April 1992 and that plaintiff purchased a home in Las Vegas in April 1992.

25. Plaintiff is informed and believes, and therefore alleges, that the assessments by the FTB against plaintiff for 1991 and 1992 result from the fact that almost two years after plaintiff moved from California to Nevada an FTB investigator read a magazine article about plaintiff's wealth and the FTB thereafter launched its investigation in the hope of extracting a significant settlement from plaintiff. Plaintiff is further informed and believes, and therefore alleges, that the FTB has assessed a fraud penalty against plaintiff for the 1991 tax year and issued a Notice of Proposed Assessment assessing plaintiff for the entire 1992 tax year and a fraud penalty for the same year to intimidate plaintiff and

coerce him into paying some significant amount of tax for income earned after September 26, 1991, despite its awareness that plaintiff actually became a Nevada resident at that time. Plaintiff alleges that the FTB's efforts to coerce plaintiff into sharing his hard-earned wealth despite having no lawful basis for doing so, constitutes malice and oppression.

JURISDICTION

26. This court has personal jurisdiction over the FTB pursuant to Nevada's "long-arm" statute, NRS 14.065 *et seq.*, because of the FTB's tortious extraterritorial contacts and investigatory conduct within the State of Nevada ostensibly as part of its auditing efforts to undermine plaintiff's status as a Nevada resident, but in reality to create a colorable basis for maintaining that plaintiff continued his residency in California during the period September 26, 1991 to December 31, 1991 and beyond.

27. Plaintiff is informed and believes, and therefore alleges, that the FTB has a pattern and practice of entering into Nevada to investigate Nevada residents who were formerly residents of California, and then assessing such residents California state income taxes for time periods subsequent to the date when such individuals moved to and established residency in Nevada.

FIRST CAUSE OF ACTION
(FOR DECLARATORY RELIEF)

28. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 27 above, as though set forth herein verbatim. *This cause of action is re-pled in this Second Amended Complaint to preserve plaintiff's*

right to appeal the District Court's April 3, 1999 ruling dismissing this cause of action. This cause of action is therefore no longer at issue in the District Court.

29. Pursuant to California law, in determining whether an individual was a resident of California for a certain time period thereby making such individual's income subject to California state income tax during such period, the individual must have been either domiciled in California during such period for "other than a temporary or transitory purpose." *See* Cal. Rev. & Tax Code § 17014. The FTB's own regulations and precedents require that it apply certain factors in determining an individual's domicile and/or whether the individual's presence in California (or outside of California) was more than temporary or transitory.

A. Domicile

Domicile is determined by the individual's physical presence in California with intent to stay or if absent temporarily from California an intent to return. Such intent is determined by the acts and conduct of the individual such as: (1) where the individual is registered to vote and votes; (2) location of the individual's permanent home; (3) comparative size of homes maintained by the individual in different states; (4) where the individual files federal income tax returns; (5) comparative time spent by the individual in different states; (6) cancellation of the individual's California homeowner's property tax exemption; (7) obtaining a driver's license from another state; (8) registering a car in another state; (9) joining religious, business and/or social organizations in another state; and (10) establishment of a

successful business in another state by an individual who is self employed.

B. Temporary or Transitory Purpose

The following contacts which are similar although not identical to those used to determine domicile are important in determining whether an individual was in California (or left California) for a temporary or transitory purpose: (1) physical presence of the individual in California in comparison to the other state or states; (2) establishment of a successful business in another state by an individual who is self employed; (3) extensive business interest outside of California and active participation in such business by the individual; (4) banking activity in California by the individual is given some, although not a great deal of, weight; (5) rental of property in another state by the individual; (6) cancellation of the individual's California homeowner's property tax exemption; (7) hiring professionals by the individual located in another states; (8) obtaining a driver's license from another states; (9) registering a car in another state; (10) joining religious, business, and/or social organizations in another state; and (11) where the individual is registered to vote and votes.

30. The FTB's assessment of taxes and a penalty of 1991 is based upon the FTB's conclusion in the first instance that plaintiff did not become a resident of Nevada until April 3, 1992, the date on which plaintiff closed escrow on a new home in Las Vegas. In coming to such a conclusion, the FTB discounted or refused to consider a multitude of evidentiary facts which contradicted the FTB's conclusion, and were the type of facts the FTB's own regulations and precedents

require it to consider. Such facts include, but are not limited to, the following: (1) plaintiff sold his California home on October 1, 1991 until April of 1992; (2) plaintiff rented and resided at an apartment in Las Vegas from October 1, 1991 until April of 1992; (3) plaintiff registered to vote, and obtained a Nevada's driver's license (thereby relinquishing his California driver's license), and joined a Las Vegas religious organization in November of 1991; (4) plaintiff terminated his California home owner's exemption effective October 1, 1991; (5) plaintiff began actively searching for a house to buy in Las Vegas, and submitted numerous offers on houses in Las Vegas, commencing in December of 1991; (6) plaintiff's offer to purchase a home in Las Vegas was accepted in March of 1992 and escrow closed on such purchase on April 3, 1992; and (7) plaintiff's new home in Las Vegas was substantially larger than the home in Southern California, which he sold in October of 1991.

31. An actual controversy exists as to whether plaintiff was a full-time resident of Nevada – not California – commencing on September 26, 1991 through December 31, 1991 and continuing thereafter through the year 1992 and beyond. Plaintiff contends that under either Nevada or California law, or both, he was a full-time, bona fide resident of Nevada throughout the referenced periods and down to the present, and that the FTB ignored its own regulations and precedents in finding to the contrary, and that the FTB has no jurisdiction to impose a tax obligation on plaintiff during the contested periods. Plaintiff also contends that the FTB had no authority to conduct an extraterritorial investigation of plaintiff in Nevada and no authority to propound "quasi-subpoenas" to

Nevada residents and businesses, thereby seeking to coerce the cooperation of said Nevada residents and businesses through an unlawful and tortious deception, to reveal information about plaintiff. Plaintiff is informed and believes, and therefore alleges, that the FTB contends in all respects to the contrary.

32. Plaintiff therefore requests judgment of this Court declaring and confirming plaintiff's status as a full-time, bona fide resident of the State of Nevada effective from September 26, 1991 to the present, and for judgment declaring the FTB's extraterritorial investigatory excursions into Nevada, and the submission of "quasi-subpoenas" to Nevada residents without approval from a Nevada court or governmental agency, as alleged above, to be without authority and violative of Nevada's sovereignty and territorial integrity.

SECOND CAUSE OF ACTION
(FOR INVASION OF PRIVACY – UNREASONABLE INTRUSION UPON THE SECLUSION OF ANOTHER, INCLUDING INTRUSION UPON INFORMATIONAL PRIVACY)

33. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 32, above, as though set forth herein verbatim.

34. Plaintiff is informed and believes, and therefore alleges, that neighbors, businesses, government officials and others within Nevada with whom plaintiff has had and would reasonably expect in the future to have social or business interactions, were approached and questioned by the FTB and

defendants who disclosed or implied that plaintiff was under investigation in California, and otherwise acted in such a manner as to cause doubts to arise concerning plaintiff's integrity and moral character. Moreover, as part of the audit/investigation in regard to the 1991 Return, plaintiff turned over to the FTB highly personal and confidential information with the understanding that it would remain confidential, thereby creating a confidential relationship in which the FTB was required not to disclose Hyatt's highly personal and confidential information. The FTB even noted in its own internal documentation that plaintiff had a significant concern in regard to the protection of his privacy in turning over such information. At the time this occurred, plaintiff was still hopeful that the FTB was actually operating in good faith, a proposition that, as noted throughout this complaint, proved to be utterly false.

35. Plaintiff is informed and believes, and therefore alleges, that the FTB and defendants nevertheless violated plaintiff's right to privacy in regard to such information by revealing it to third parties and otherwise conducting an investigation in Nevada, and continuing to conduct such an investigation, through which the FTB and defendants revealed to third parties personal and confidential information, which plaintiff had every right to expect would not be revealed to such parties.

36. Plaintiff is informed and believes, and therefore alleges, that the FTB and defendants' extensive probing and investigation of plaintiff, including their actions both occurring within Nevada and directed to Nevada from California, were

performed, and continue to be performed, with the intent to harass, annoy, vex, embarrass and intimidate plaintiff such that he would eventually enter into a settlement with the FTB concerning his residency during the disputed time periods and the taxes and penalties allegedly owed. Such conduct by the FTB and defendants did in fact, and continues to, harass, annoy, vex and embarrass Hyatt, and syphon his time and energies from the productive work in which he is engaged.

37. Plaintiff is informed and believes, and therefore alleges, that the FTB and defendants through their investigative actions, and in particular the manner in which they were carried out in Nevada, intentionally intruded, and continues to intentionally intrude, into the solitude and seclusion which plaintiff had specifically sought by moving to Nevada. The intrusion by the FTB and defendants was such that any reasonable person, including plaintiff, would find highly offensive.

38. As a direct, proximate, and foreseeable result of the FTB and defendants' aforementioned invasion of plaintiff's privacy, plaintiff has suffered actual and consequential damages in a total amount in excess of $10,000.

39. Plaintiff is informed and believes, and therefore alleges, that said invasion of plaintiff's privacy was intentional, malicious, and oppressive in that such invasion was despicable conduct by the FTB and defendants entered into with a willful and conscious disregard of plaintiff's rights, and the efficacious intent to cause him injury. Plaintiff is therefore entitled to an award of punitive damages

against the FTB and defendants in an amount sufficient to satisfy the purposes for which such damages are awarded.

CLAIM FOR ATTORNEYS' FEES AS SPECIAL DAMAGES PURSUANT TO NRCP 9 (g)

40. Plaintiff was drawn into the FTB's audit without choice and as an innocent party. As such, plaintiff had every right to expect that the FTB's demand for an audit would be processed in good faith; according to the law and the facts. Instead, he was subjected to, and continues to be subjected to, a determined and malicious bad-faith attempt to extort money from plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud penalty" assessments designed to force plaintiff to yield to a major compromise or suffer significant financial and reputational destruction. The threatened (and consummated) tortious actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the publicity of private facts that were expressly extracted from plaintiff under false promises of strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent detriment.

41. Plaintiff was forced to disclose his private documents and information with the FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him

permanently of his hard-earned personal property and right not to have his privacy invaded by the publication of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means available, to wit: the employment of teams of legal and professional experts to vigorously defend himself in the audits and the continuing California tax proceedings.

42. It was highly foreseeable to the FTB that, absent the success of its scheme to unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only alternative was to vigorously defend himself in the audits and the continuing California tax proceedings. This required the employment of a team of attorneys and other experts. The resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues to incur, were proximately and directly caused and necessitated by the FTB's course of tortious behavior.

43. Plaintiff's incurrence of attorneys' fees and other professional fees are highly foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims, as special damages, his attorneys' fees in an amount in excess of $10,000.00, the total amount thereof to be proved according to the evidence at trial.

THIRD CAUSE OF ACTION
(FOR INVASION OF PRIVACY – UNREASONABLE PUBLICITY GIVEN TO PRIVATE FACTS, INCLUDING PUBLICITY GIVEN TO MATTERS PROTECTED UNDER THE CONCEPT OF INFORMATIONAL PRIVACY)

44. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 43, above, as though set forth herein verbatim.

45. As set forth above, plaintiff revealed to the FTB highly personal and confidential information at the request of the FTB as an ostensible part of its audit and investigation into plaintiff's residency during the disputed time periods, thereby creating a confidential relationship in which the FTB was required not to disclose Hyatt's highly personal and confidential information. Plaintiff had a reasonable expectation that said information would be kept confidential and not revealed to third parties and the FTB and defendants knew and understood that said information was to be kept confidential and not revealed to third parties.

46. The FTB and defendants, without necessity or justification, nevertheless disclosed to third parties, and continue to disclose to third parties, in Nevada certain of plaintiff's personal and confidential information which had been cooperatively disclosed to the FTB by plaintiff only for the purposes of facilitating the FTB's legitimate auditing and investigative efforts, or which the FTB had acquired via other means but was required by its own rules and regulations or state law not to disclose to third parties.

47. As a direct, proximate, and foreseeable result of the FTB's aforementioned invasion of plaintiff's privacy, plaintiff has suffered actual and consequential damages in a total amount in excess of $10,000.

48. Plaintiff is informed and believes, and therefore alleges, that said invasion of plaintiff's privacy was intentional, malicious, and oppressive in that such invasion constituted despicable conduct by the FTB and defendants entered into with a willful and conscious disregard of the rights of plaintiff. Plaintiff is therefore entitled to an award of punitive or exemplary damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

CLAIM FOR ATTORNEYS' FEES AS SPECIAL DAMAGES PURSUANT TO NRCP 9 (g)

49. Plaintiff was drawn into the FTB's audit without choice and as an innocent party. As such, plaintiff had every right to expect that the FTB's demand for an audit would be processed in good faith, according to the law and the facts. Instead, he was subjected to, and continues to be subjected to, a determined and malicious bad-faith attempt to extort money from plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud penalty" assessments designed to force plaintiff to yield to a major compromise or suffer significant financial and reputational destruction. The threatened (and consummated) tortious actions included the outrageously intrusive invasion of his privacy, as

aforesaid, and the publicity of private facts that were expressly extracted from plaintiff under false promises of strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent detriment.

50. Plaintiff was forced to disclose his private documents and information with the FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently of his hard-earned personal property and right not to have his privacy invaded by the publication of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means available, to wit: the employment of teams of legal and professional experts to vigorously defend himself in the audits and the continuing California tax proceedings.

51. It was highly foreseeable to the FTB that, absent the success of its scheme to unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only alternative was to vigorously defend himself in the audits and the continuing California tax proceedings. This required the employment of a team of attorneys and other experts. The resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues to incur, were proximately and directly caused and necessitated by the FTB's course of tortious behavior.

FOURTH CAUSE OF ACTION
(FOR INVASION OF PRIVACY – CASTING PLAINTIFF IN A FALSE LIGHT)

53. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 52, above, as if set forth herein verbatim.

54. By conducting interviews and interrogations of Nevada residents and by issuing unauthorized "Demands to Furnish Information" as part of their investigation in Nevada of plaintiff's residency, the FTB and defendants invaded plaintiff's right to privacy by stating or insinuating to said Nevada residents that plaintiff was under investigation in California, thereby falsely portraying plaintiff as having engaged in illegal and immoral conduct, and decidedly casting plaintiff's character in a false light.

55. The FTB and defendants' conduct in publicizing its investigation of plaintiff cast plaintiff in a false light in the public eye, thereby adversely compromising the attitude of those who know or would, in reasonable likelihood, come to know Gil Hyatt because of the nature and scope of his work. Such publicity of the investigation was offensive and objectionable to plaintiff and was carried out for other than honorable, lawful, or reasonable purposes. Said conduct by the FTB and the defendants was calculated to harm, vex, annoy and intimidate plaintiff, and was not only offensive and embarrassing to plaintiff, but would have been equally so to any reasonable person of ordinary sensibilities similarly situated, as the conduct could only serve to damage plaintiff's reputation.

56. As a direct, proximate, and foreseeable result of the FTB and defendants' aforementioned invasion of plaintiff's privacy, plaintiff has suffered actual and consequential damages in a total amount in excess of $10,000.

57. Plaintiff is informed and believes, and therefore alleges, that said invasion of plaintiff's privacy was intentional, malicious, and oppressive in that such invasion of privacy was despicable conduct by the FTB and defendants, entered into with a willful and conscious disregard of the rights of plaintiff. Plaintiff is therefore entitled to an award of exemplary or punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

CLAIM FOR ATTORNEYS' FEES AS SPECIAL DAMAGES PURSUANT TO NRCP 9 (g)

58. Plaintiff was drawn into the FTB's audit without choice and as an innocent party. As such, plaintiff had every right to expect that the FTB's demand for an audit would be processed in good faith, according to the law and the facts. Instead, he was subjected to, and continues to be subjected to, a determined and malicious bad-faith attempt to extort money from plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud penalty" assessments designed to force plaintiff to yield to a major compromise or suffer significant financial and reputational destruction. The threatened (and consummated) tortious actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the publicity of private facts that were

expressly extracted from plaintiff under false promises of strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent detriment.

59. Plaintiff was forced to disclose his private documents and information with the FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently of his hard-earned personal property and right not to have his privacy invaded by the publication of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means available, to wit: the employment of teams of legal and professional experts to vigorously defend himself in the audits and the continuing California tax proceedings.

60. It was highly foreseeable to the FTB that, absent the success of its scheme to unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only alternative was to vigorously defend himself in the audits and the continuing California tax proceedings. This required the employment of a team of attorneys and other experts. The resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues to incur, were proximately and directly caused and necessitated by the FTB's course of tortious behavior.

61. Plaintiff's incurrence of attorneys' fees and other professional fees are highly foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims, as special damages, his attorneys' fees in an amount in excess of $10,000.00, the total amount thereof to be proved according to the evidence at trial.

FIFTH CAUSE OF ACTION
(FOR THE TORT OF OUTRAGE)

62. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 61, above, as if set forth herein verbatim.

63. The clandestine and reprehensible manner in which the FTB and defendants carried out their investigation in Nevada of plaintiff's Nevada residency under the cloak of authority from the State of California, but without permission from the State of Nevada, and the FTB and defendants' clear intent to continue to investigate and assess plaintiff's staggeringly high California state income taxes, interest, and penalties for the entire year of 1992- and possibly continuing into future years- despite the FTB's own finding that plaintiff was a Nevada resident at least as of April of 1992, was, and continues to be, extreme, oppressive and outrageous conduct. The FTB has, in every sense, sought to hold plaintiff hostage in California, disdaining and

abandoning all reason in its reprehensible, all-out effort to extort significant amounts of plaintiff's income without a basis in law or fact. Plaintiff is informed and believes, and therefore alleges, that the FTB and defendants carried out their investigation in Nevada for the ostensible purpose of seeking truth concerning his place of residency, but the true purpose of which was, and continue to be, to so harass, annoy, embarrass, and intimidate plaintiff, and to cause him such severe emotional distress and worry as to coerce him into paying significant sums to the FTB irrespective of his demonstrably bona fide residence in Nevada throughout the disputed periods. As a result of such extremely outrageous and oppressive conduct on the part of the FTB and defendants, plaintiff has indeed suffered fear, grief, humiliation, embarrassment, anger, and a strong sense of outrage that any honest and reasonably sensitive person would feel if subjected to equivalent unrelenting, outrageous personal threats and insults by such powerful and determined adversaries.

64. As a direct, proximate, and foreseeable result of the FTB and defendants' aforementioned extreme, unrelenting, and outrageous conduct, plaintiff has suffered actual and consequential damages in a total amount in excess of $10,000.

65. Plaintiff is informed and believes, and therefore alleges, that said extreme, unrelenting, and outrageous conduct was intentional, malicious, and oppressive in that it was despicable conduct by the FTB and defendants, entered into with a willful and conscious disregard of plaintiff's rights. Plaintiff is therefore entitled to an award of exemplary or

punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

CLAIM FOR ATTORNEYS' FEES AS SPECIAL DAMAGES PURSUANT TO NRCP 9 (g)

66. Plaintiff was drawn into the FTB's audit without choice and as an innocent party. As such, plaintiff had every right to expect that the FTB's demand for an audit would be processed in good faith, according to the law and the facts. Instead, he was subjected to, and continues to be subjected to, a determined and malicious bad-faith attempt to extort money from plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud penalty" assessments designed to force plaintiff to yield to a major compromise or suffer significant financial and reputational destruction. The threatened (and consummated) tortious actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the publicity of private facts that were expressly extracted from plaintiff under false promises of strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent detriment.

67. Plaintiff was forced to disclose his private documents and information with the FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently of his hard-earned personal property and

right not to have his privacy invaded by the publication of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means available, to wit: the employment of teams of legal and professional experts to vigorously defend himself in the audits and the continuing California tax proceedings.

68. It was highly foreseeable to the FTB that, absent the success of its scheme to unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only alternative was to vigorously defend himself in the audits and the continuing California tax proceedings. This required the employment of a team of attorneys and other experts. The resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues to incur, were proximately and directly caused and necessitated by the FTB's course of tortious behavior.

69. Plaintiff's incurrence of attorneys' fees and other professional fees are highly foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims, as special damages, his attorneys' fees in an amount in excess of $10,000.00, the total amount thereof to be proved according to the evidence at trial.

SIXTH CAUSE OF ACTION
(FOR ABUSE OF PROCESS)

70. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 69, above, as if set forth herein verbatim.

71. Despite plaintiff's ongoing effort, both personally and through his professional representatives, to reasonably provide the FTB with every form of information it requested in order to convince the FTB that plaintiff has been a bona fide resident of the State of Nevada since September 26, 1991, the FTB has willfully sought to extort vast sums of money from plaintiff through administrative proceedings unrelated to the legitimate taxing purposes for which the FTB is empowered to act as an agency of the government of the State of California; said administrative proceedings have been lawlessly and abusively directed into the State of Nevada through means of administrative "quasi-subpoenas" that have been unlawfully utilized in the attempt to extort money from plaintiff as aforesaid.

72. The FTB, without authorization from any Nevada court or governmental agency, directed facially authoritative "DEMAND[S] TO FURNISH INFORMATION," also referred to herein by plaintiff as "quasi-subpoenas," to various Nevada residents, professionals and businesses, requiring specific information about plaintiff. The aforesaid "Demands" constituted an actionable abuse of process with respect to plaintiff for the following reasons:

(a) Despite the fact that each such "Demand" was without force of law, they were specifically

represented to be "Authorized by California Revenue & Taxation Code Section 19504 (formerly 19254 (a) and 26423 (a)[])," sent out by the State of California, Franchise Tax Board on behalf of "The People of the State of California" to each specific recipient, and were prominently identified as relating to "*In the Matter of* Gilbert P. Hyatt;" Plaintiff was also identified by his social security number, and in certain instances by his actual home address in violation of express promises of confidentiality by the FTB; although the aforesaid "Demands" were not directed to plaintiff, the perversion of administrative process which they represented was motivated by the intent to make plaintiff both the target and the victim of the illicit documents;

(b) Each such "Demand" was unlawfully used in order to further the effort to extort monies from plaintiff that could not be lawfully and constitutionally assessed and collected because plaintiff was a bona fide resident of Nevada throughout the periods of time the FTB has sought to collect taxes from him, and plaintiff has not generated any California income during any of the pertinent time periods;

(c) Each such "Demand" was submitted to Nevada residents, professionals and businesses for the ulterior purpose of coercing plaintiff into paying extortionate sums of money to the FTB without factual or constitutional justification, and without the intent or prospect of resolving any legal dispute; indeed, as noted above, many of the "Demands" were used as vehicles for publicly violating express promises of confidentiality by the FTB, thus adding to the

pressure and anxiety felt by plaintiff as intended by the FTB in furtherance of its unlawful scheme;

(d) Although the FTB was allegedly investigating plaintiff for the audit years 1991 and 1992, such audits were and are a "sham" asserted for the purposes of attempting to extort non-owed monies from plaintiff, as demonstrated by the fact that several of the "Demands" indicated that they were issued to secure information (about plaintiff) "for investigation, audit or collection purposes pertaining to the above-named taxpayer for the years indicated," and then proceeded to demand information pertaining to the years 1993, 1994, and 1995 "to present;"

(e) Sheila Cox, a tax auditor for the FTB who has invested hundreds of hours in attempting to gain unlawful access to plaintiff's wallet through means of extortion, was the "Authorized Representative" who issued these abusive, deceptive and outrageous "Demands;" and each of the "Demands" or quasi-subpoenas constituted legal or administrative process targeting plaintiff that was not proper in the regular conduct of the FTBs administrative proceedings against plaintiff;

(f) That each "Demand" was selectively, deliberately and calculatingly issued to Nevada recipients who Sheila Cox and the FTB thought would most likely respond to the authoritative nature and language of the documents, as opposed to courteous letters of inquiry that tax auditors and the FTB sent to certain governmental agencies and officials who were viewed as potential sources of criticism or trouble if confronted with the deceptive attempt to exact sensitive information from them through means of

facially coercive documents purporting to have extraterritorial effect based upon the authority of California law;

(g) In conjunction with and in addition to the issuance of the aforesaid "Demands," and the personal, investigative forays into Nevada by FTB agents, as detailed above, a representative of the FTB, Anna Jovanovich, stated to plaintiff's tax counsel, Eugene Cowan, Esq., that at this "stage" of the proceedings, these types of disputes involving wealthy or well-known taxpayers over their contested assessments almost always settle because these taxpayers do not want to risk having their personal financial information being made public, thus the "suggestion" by Ms. Jovanovich concerning settlement was made with the implied threat that the FTB would release highly confidential financial information concerning plaintiff if he refused to settle, another deceptive and improper abuse of the proceedings instigated by the FTB to coerce settlement by plaintiff;

(h) In conjunction with and in addition to the issuance of the aforesaid "Demands" and the other improper methods of exerting coercive pressure on plaintiff to pay the FTB money which it has sought to secure by extortion, and without justification in law or equity, the FTB compounded its abuse of its administrative powers by assessing plaintiff huge penalties based on patently false and frivolous accusations, including but not limited to, the concealment of assets to avoid taxes, plus the outrageous contention that plaintiff was fraudulently claiming Nevada residency;

(i) The FTB and Sheila Cox knew that they had no authority to issue "DEMAND[S] TO FURNISH INFORMATION" to any Nevada resident, business or entity, and that it was gross abuse of Section 19504 of the California Revenue and Taxation Code, under which the aforesaid "Demands" were purportedly authorized; that the aforesaid section of the California Revenue and Taxation Code contains no provision that remotely purports to empower or authorize the FTB to issue such facially coercive documents to residents and citizens of Nevada in Nevada; and despite knowing that it was highly improper and unlawful to attempt to deceive Nevada citizens and businesses into believing that they were under compulsion to respond to the "Demands" under pain of some type of punitive consequences, Sheila Cox and the FTB nevertheless deliberately and calculatingly abused the process authorized by the aforesaid section of the California Revenue and Taxation Code in order to promote their attempts to extort money from plaintiff;

(j) From the outset, the determination by Sheila Cox and the FTB to utilize the "DEMAND[S] TO FURNISH INFORMATION" in Nevada, constituted a deliberate, unlawful, and despicable decision to embark on a course of concealment in the effort to produce material information, pressure and sources of distortion that would culminate in a combination of sufficient strength and adversity to force plaintiff to yield to the FTB's extortionate demands for money; and the course of concealment consisted of concealing from plaintiff the fact that the aforesaid "Demands" were being sent to Nevada residents, professional persons and businesses, and in hiding from the recipients of the "Demands" the fact that despite their

stated support in California law, the documents had no such support and were deceitful and bogus documents; and

(k) The FTB further abused its legal, administrative process by issuing the bogus quasi-subpoenas to Nevada residents, professionals, and businesses without providing plaintiff with notice of such discovery as required by the due process clause of Article 1, Section 8 of the Nevada Constitution and the applicable Nevada Rules of Civil Procedure.

73. As a direct, proximate and foreseeable result of the FTB and defendants' intentional and malicious abuse of the administrative processes, which the FTB initiated and unrelentingly pursued against plaintiff, as aforesaid, plaintiff has suffered actual and consequential damages, including but not limited to fear, anxiety, mental and emotional distress in an amount in excess of $10,000.

74. Plaintiff is informed and reasonably believes, and therefore alleges, that said abuse of the administrative processes initiated and pursued against plaintiff was willful, intentional, malicious and oppressive in that it represented a deliberate effort to unlawfully extort substantial sums of money from plaintiff that could not be remotely justified by any honorable effort within the purview of the powers conferred upon the FTB by the State of California relating to all aspects of taxation, including the powers of investigation, assessment and collection. Plaintiff is therefore entitled to an award of exemplary or punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

CLAIM FOR ATTORNEYS' FEES AS SPECIAL DAMAGES PURSUANT TO NRCP 9 (g)

75. Plaintiff was drawn into the FTB's audit without choice and as an innocent party. As such, plaintiff had every right to expect that the FTB's demand for an audit would be processed in good faith, according to the law and the facts. Instead, he was subjected to, and continues to be subjected to, a determined and malicious bad-faith attempt to extort money from plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud penalty" assessments designed to force plaintiff to yield to a major compromise or suffer significant financial and reputational destruction. The threatened (and consummated) tortious actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the publicity of private facts that were expressly extracted from plaintiff under false promises of strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent detriment.

76. Plaintiff was forced to disclose his private documents and information with the FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently of his hard-earned personal property and right not to have his privacy invaded by the publication of his confidential, private facts as

aforesaid; or (2) fight the FTB through the only means available, to wit: the employment of teams of legal and professional experts to vigorously defend himself in the audits and the continuing California tax proceedings.

77. It was highly foreseeable to the FTB that, absent the success of its scheme to unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only alternative was to vigorously defend himself in the audits and the continuing California tax proceedings. This required the employment of a team of attorneys and other experts. The resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues to incur, were proximately and directly caused and necessitated by the FTB's course of tortious behavior.

78. Plaintiff's incurrence of attorneys' fees and other professional fees are highly foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims, as special damages, his attorneys' fees in an amount in excess of $10,000.00, the total amount thereof to be proved according to the evidence at trial.

SEVENTH CAUSE OF ACTION
(FOR FRAUD)

79. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 78, above, as if set forth herein verbatim.

80. Plaintiff, who prior to September 26, 1991 had been a long-standing resident and taxpayer of the State of California, placed trust and confidence in the bona fides of the FTB as the taxing authority of the State of California when the FTB first contacted him on or about June 1993 regarding the 1991 audit of his California tax obligation; by the time of this first contact, plaintiff had become a recognized and prominent force in the computer electronics industry, and he was vitally interested in maintaining both his personal and business security, as well as the integrity of his reputation as a highly successful inventor and owner and licensor of significantly valuable patents.

81. During the course of seeking information and documents relating to the 1991 "audit," and repeatedly thereafter, the FTB absolutely promised to (i) conduct an unbiased, good faith audit and (ii) maintain in the strictest of confidence, various aspects of plaintiff's circumstances, including, but not limited to, his personal home address and his business and financial transactions and status; and plaintiff's professional representatives took special measures to maintain the confidentiality of plaintiff's affairs, including and especially obtaining solemn commitments from FTB agents to maintain in the strictest of confidence (assured by supposedly secure

arrangements) all of plaintiff's confidential information and documents; and the said confidential information and documents were given to the FTB in return for its solemn guarantees and assurances of confidentiality, as aforesaid, thereby creating a confidential relationship in which the FTB was required not to disclose Hyatt's highly personal and confidential information.

82. Despite the aforesaid assurances and representations of (i) an unbiased, good faith audit and (ii) confidentiality by the FTB, said assurances and representations were false, and the FTB knew they were false or believed they were false, or were without a sufficient basis for making said assurances and representations. Even as the FTB and its agents were continuing to provide assurances of confidentiality to plaintiff and his professional representatives, and without notice to either, Sheila Cox and the FTB were in the process of sending the bogus "DEMAND[S] TO FURNISH INFORMATION" to the utility companies in Las Vegas which demonstrated that the aforesaid assurances and representations were false, as the FTB revealed plaintiff's personal home address in Las Vegas, thus making this highly sensitive and confidential information essentially available to the world through access to the databases maintained by the utility companies. Specific representative indices of the FTB's fraud include:

(a) In a letter by Eugene Cowan, Esq., a tax attorney representing plaintiff, dated November 1, 1993 and addressed to and received by Mr. Marc Shayer of the FTB, Mr. Cowan indicated that he was

enclosing a copy of plaintiff's escrow instructions concerning the purchase of his Las Vegas residence, and that "[p]er our discussion, the address of the Las Vegas home has been deleted." Mr. Cowan ended his letter with the following sentence: "As we discussed, the enclosed materials are highly confidential and we do appreciate your utmost care in maintaining their confidentiality." This letter is contained within the files of the FTB, and the FTB noted in its chronological list of items, the receipt of the aforesaid escrow instructions with "Address deleted;"

(b) In the FTB's records concerning its Residency Audit 1991 of Gilbert P. Hyatt, the following pertinent excerpts of notations exist:

> (i) 2/17/95 – "[Eugene Cowan] wants us to make as few copies as possible, as he is concerned for the privacy of the taxpayer. I [the FTB agent] explained that we will need copies, as the cases often take a long time to complete and that cases which go to protest can take several years to resolve[;]"
>
> (ii) 2/21/95 – "LETTER FROM REPRESENTATIVE MIKE KERN Earlier document request was transferred to Eugene Cowan due to the sensitive and confidential nature of documentation[;]"
>
> (iii) 2/23/95 - "Meeting [between Sheila Cox and] ... Eugene Cowan ... Mr. Cowan stressed that the taxpayer is very worried about his privacy and does not wish to give us copies of anything. I [Sheila Cox] discussed with him our Security and Disclosure policy. He said that the taxpayer is fearful of kidnapping." [sic] This latter reference

to "kidnaping" is a fabrication by Sheila Cox in an apparent effort to downplay in the FTB's records, the importance of plaintiff's privacy concerns as those of an eccentric or paranoid; in reality, the FTB, Sheila Cox and other FTB agents knew that plaintiff had genuine cause for being concerned about industrial espionage and other risks associated with the magnitude of plaintiff's position in the computer electronics industry;

(iv) On February 28, 1995, Eugene Cowan, Esq. sent a letter to Sheila Cox of the FTB enclosing copies of various documents. He then stated: "As previously discussed with you and other Franchise Tax Board auditors, all correspondence and materials furnished to the Franchise Tax Board by the taxpayer are highly confidential. It is our understanding that you will retain these materials in locked facilities with limited access[;]" and

(v) 8/31/95 – In a letter sent to Eugene Cowan, Esq. by Sheila Cox on 8/31195 regarding the 1991 audit, Cox stated: "The FTB acknowledges that the taxpayer is a private person who puts a significant effort into protecting his privacy[;]"

(c) Despite the meeting Sheila Cox had with Mr. Cowan on February 23, 1995, and Mr. Cowan's expression of plaintiff's concern for his privacy, and the explanation by Cox of the FTB's stringent Security and Disclosure policy (the violation of which may subject the offending FTB employee to criminal sanctions or termination); and despite Mr. Cowan's letter to Sheila Cox of February 28, 1995, discussing

the highly confidential nature of "all correspondence and materials furnished to the Franchise Tax Board" and his and plaintiff's "understanding that you will retain these materials in locked facilities with limited access" (thereby again underscoring the understanding that all information and documents provided to the FTB would be confidential, including plaintiff's personal residence address), Sheila Cox sent a "DEMAND TO FURNISH INFORMATION" to the Las Vegas utility companies including Southwest Gas Corp., Silver State Disposal Service and Las Vegas Valley Water District, providing each such company with the plaintiff's personal home address, thereby demonstrating disdain for plaintiff, his privacy concerns and the FTB's assurances of confidentiality.

84. Plaintiff further alleges that from the very beginning of the FTB's notification to plaintiff and his professional representatives of its intention to audit his 1991 California taxes, express and implied assurances and representations were made to plaintiff through his representatives, that the audit was to be an objective, unbiased, and good faith inquiry into the status of his 1991 tax obligation; and that upon information and belief, based on the FTB's subsequent actions, the aforesaid representations were untrue, as the FTB and certain of its agents were determined to share in the highly successful produce of plaintiff's painstaking labor through means of truth-defying extortion. Indications of this aspect of the fraud perpetrated by the FTB include:

(a) Despite plaintiff's delivery of copies of documentary evidence of the sale of his California residence on October 1, 1991 to his business associate

and confidant, Grace Jeng, to the FTB, the FTB has contended that the aforementioned sale was a sham, and therefore evidence of plaintiff's continued California residency and his attempt to evade California income tax by fraud;

(b) Plaintiff supplied evidence to the FTB that he declared his sale, and income and interest derived from the sale of his LaPalma, California home on his 1991 income tax return, factors that were ignored by the FTB as it concluded that since the grant deed on the home was not recorded until June, 1993, the sale was a sham, as aforesaid, and a major basis for assessing fraud penalties against plaintiff as a means of building the pressure for extortion;

(c) Plaintiff, aware of his own whereabouts and domicile, alleges that the FTB has no credible evidence, and can indeed provide none, that would indicate that plaintiff continued to own or occupy his former home in La Palma, California which he sold to his business associate and confidant, Grace Jeng on October 1, 1991;

(d) After declaring plaintiff's sale of his California home on October 1, 1991 a "sham," the FTB later declined to compare the much less expensive California home with the home plaintiff purchased in Las Vegas, Nevada (a strong indication favoring Nevada residency) stating that: "Statistics (size, cost, etc.) comparing the taxpayer's La Palma home to his Las Vegas home will not be weighed in the determination [of residency], as the taxpayer sold the La Palma house on 10/1/91 before he purchased the house in Las Vegas during April of 1992." (Emphasis added.); and

(e) The FTB's gamesmanship, illustrated in part, above, constituted an ongoing misrepresentation of a bona fide audit of plaintiff's 1991 tax year, a factor compounded egregiously by the quasi-subpoenas sent to Nevada residents, professionals and businesses without prior notice to plaintiff, and concerning which a number of such official documents indicated that plaintiff was being investigated from January 1995 to the present, all with the intent of defrauding plaintiff into believing that he would owe an enormous tax obligation to the State of California.

84. The FTB and its agents intended to induce plaintiff and his professional representatives to act in reliance on the aforesaid false assurances and representations in order to acquire highly sensitive and confidential information from plaintiff and his professional representatives, and place plaintiff in a position where he would be vulnerable to the FTB's plans to extort large sums of money from him. The FTB was keenly aware of the importance plaintiff assigned to his privacy because of the danger of industrial espionage and other hazards involving the extreme need for security in plaintiff's work and place of residence. The FTB also knew that it would not be able to obtain (at least without the uncertain prospects of judicial intervention) the desired information and documents with which to develop colorable, ostensible tax assessments and penalties against plaintiff, without providing plaintiff and his professional representatives with solemn commitments of secure confidentiality.

85. Plaintiff, reasonably relying on the truthfulness of the aforesaid assurances and

representations by the FTB and its agents, and having no reason to believe that an agency of the State of California would misrepresent its commitments and assurances, did agree both personally and through his authorized professional representatives to cooperate with the FTB and provide it with his highly sensitive and confidential information and documents; in fact, plaintiff relied on the false representations and assurances of the FTB and its agents to his extreme detriment.

86. Plaintiff's reasonable reliance on the misrepresentations of the FTB and its agents, as aforesaid, resulted in great damage to plaintiff, including damage of an extent and nature to be revealed only to the Court *in camera*, plus actual and consequential damages, including but not limited to fear, anxiety, mental and emotional distress, in a total amount in excess of $10,000.

87. The aforesaid misrepresentations by the FTB and its agents were fraudulent, oppressive and malicious. Plaintiff is therefore entitled to an award of exemplary or punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

CLAIM FOR ATTORNEYS' FEES AS SPECIAL DAMAGES PURSUANT TO NRCP 9 (g)

88. Plaintiff was drawn into the FTB's audit without choice and as an innocent party. As such, plaintiff had every right to expect that the FTB's demand for an audit would be processed in good faith, according to the law and the facts. Instead, he was subjected to, and continues to be subjected to, a determined and malicious bad-faith attempt to extort

money from plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud penalty" assessments designed to force plaintiff to yield to a major compromise or suffer significant financial and reputational destruction. The threatened (and consummated) tortious actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the publicity of private facts that were expressly extracted from plaintiff under false promises of strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent detriment.

89. Plaintiff was forced to disclose his private documents and information with the FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently of his hard-earned personal property and right not to have his privacy invaded by the publication of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means available, to wit: the employment of teams of legal and professional experts to vigorously defend himself in the audits and the continuing California tax proceedings.

90. It was highly foreseeable to the FTB that, absent the success of its scheme to unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction of his privacy and the

imposition of huge "fraud" penalties, as aforesaid, plaintiff's only alternative was to vigorously defend himself in the audits and the continuing California tax proceedings. This required the employment of a team of attorneys and other experts. The resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues to incur, were proximately and directly caused and necessitated by the FTB's course of tortious behavior.

91. Plaintiff's incurrence of attorneys' fees and other professional fees are highly foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims, as special damages, his attorneys' fees in an amount in excess of $10,000.00, the total amount thereof to be proved according to the evidence at trial.

EIGHTH CAUSE OF ACTION
(FOR BREACH OF CONFIDENTIALITY – INCLUDING INFORMATIONAL PRIVACY)

92. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 91, above, as though set forth herein verbatim.

93. As represented in its own manuals and policies, to obtain voluntary compliance by a taxpayer to produce information requested of the taxpayer during audits, the FTB seeks to gain the trust and confidence of the taxpayer by promising

confidentiality and fairness. Moreover, in its position as an auditor, the FTB does gain, both voluntarily and by compulsion if necessary, possession of personal and confidential information concerning the taxpayer that a taxpayer would reasonably expect to be kept confidential and not disclosed to third parties. As a result, a confidential relationship exists between the FTB and the taxpayer during an audit, and continues to exist so long as the FTB maintains possession of the personal and confidential information, that places a duty of loyalty on the FTB to not disclose the highly personal and confidential information it obtains concerning the taxpayer.

94. As described above, in return and in response to the FTB's representations of confidentiality and fairness during the audits, plaintiff did reveal to the FTB highly personal and confidential information at the request of the FTB as an ostensible part of its audits and investigation into plaintiff's residency during the disputed time periods. The FTB, in its position as an auditor, also acquired personal and confidential information concerning plaintiff via other means. Based on its duty of loyalty and confidentiality in its role as auditor, the FTB was required to act in good faith and with due regard to plaintiff's interests of confidentiality and thereby not disclose to third parties plaintiff's personal and confidential information. The FTB, without necessity or justification, nevertheless breached its duty of loyalty and confidentiality by making disclosures to third parties, and continuing to make disclosures to third parties, of plaintiff's personal and confidential information that the FTB had a duty not to disclose.

95. As a result of such extremely outrageous and oppressive conduct on the part of the FTB, plaintiff has indeed suffered fear, grief, humiliation, embarrassment, anger, and a strong sense of outrage that any honest and reasonably sensitive person would feel upon breach of confidentiality by a party in whom trust and confidence has been imposed based on that party's position.

96. As a direct, proximate, and foreseeable result of the FTB's aforementioned invasion of plaintiff's privacy, plaintiff has suffered actual and consequential damages in a total amount in excess of $10,000.

97. Plaintiff is informed and believes, and therefore alleges, that said breach of confidentiality by the FTB was intentional, malicious, and oppressive in that such breach constituted despicable conduct by the FTB entered into with a willful and conscious disregard of the rights of plaintiff. Plaintiff is therefore entitled to an award of punitive or exemplary damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

CLAIM FOR ATTORNEYS' FEES AS SPECIAL DAMAGES PURSUANT TO NRCP 9 (g)

98. Plaintiff was drawn into the FTB's audit without choice and as an innocent party. As such, plaintiff had every right to expect that the FTB's demand for an audit would be processed in good faith, according to the law and the facts. Instead, he was subjected to, and continues to be subjected to, a determined and malicious bad-faith attempt to extort money from plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent

and oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud penalty" assessments designed to force plaintiff to yield to a major compromise or suffer significant financial and reputational destruction. The threatened (and consummated) tortious actions included the outrageously intrusive invasion of his privacy and breach of confidentiality, as aforesaid, and the publicity of private facts that were expressly extracted from plaintiff under false promises of strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent detriment.

99. Plaintiff was forced to disclose his private documents and information with the FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently of his hard-earned personal property and right not to have his privacy invaded by the publication of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means available, to wit: the employment of teams of legal and professional experts to vigorously defend himself in the audits and the continuing California tax proceedings.

100. It was highly foreseeable to the FTB that, absent the success of its scheme to unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only alternative was to vigorously defend

himself in the audits and the continuing California tax proceedings. This required the employment of a team of attorneys and other experts. The resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues to incur, were proximately and directly caused and necessitated by the FTB's course of tortious behavior.

101. Plaintiff's incurrence of attorneys' fees and other professional fees are highly foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims as special damages, his attorneys' fees in an amount in excess of $10,000.00, the total amount thereof to be proved according to the evidence at trial.

WHEREFORE, plaintiff respectfully prays for judgment against the FTB and defendants as follows:

FIRST CAUSE OF ACTION

1. For judgment declaring and confirming that plaintiff is a bona fide resident of the State of Nevada effective as of September 26, 1991 to the present;

2. For judgment declaring that the FTB has no lawful basis for continuing to investigate plaintiff in Nevada concerning his residency between September 26, 1991 through December 31, 1991 or any other subsequent period down to the present, and declaring that the FTB has no right or authority to propound or otherwise issue a "Demand to Furnish Information" or

other quasi subpoenas to Nevada residents and businesses seeking information concerning plaintiff;

3. For costs of suit;

4. For such other and further relief as the Court deems just and proper.

SECOND CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

3. For costs of suit;

4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and

5. For such other and further relief as the Court deems just and proper.

THIRD CAUSE OF ACTION

1. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

2. For costs of suit;

3. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and

4. For such other and further relief as the Court deems just and proper.

FOURTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

3. For costs of suit;

4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and

5. For such other and further relief as the Court deems just and proper.

FIFTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

3. For costs of suit;

4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and

5. For such other and further relief as the Court deems just and proper.

SIXTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

3. For costs of suit;

4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and

5. For such other and further relief as the Court deems just and proper.

SEVENTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

3. For costs of suit;

4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and

5. For such other and further relief as the Court deems just and proper.

EIGHTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of $10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

3. For costs of suit;

4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and

5. For such other and further relief as the Court deems just and proper.

Dated this 18th day of April, 2006.

DISTRICT COURT
CLARK COUNTY, NEVADA

No. A382999

GILBERT P. HYATT,

Plaintiff,

v.

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA, and DOES 1-100, inclusive,

Defendants.

Filed: May 26, 2006

ANSWER TO SECOND AMENDED COMPLAINT

Defendant Franchise Tax Board of the State of California ("FTB") answers the Second Amended Complaint as follows:

1. In documents filed with the State of California Mr. Hyatt admitted being a long-time California resident. Mr. Hyatt then filed a part-year non-resident income tax return for 1991, representing that he moved to Nevada on October 1, 1991 just before receiving many millions of dollars in income. California has personal state income tax; Nevada does not. FTB conducted an audit of Mr. Hyatt to determine the truthfulness of his representations about if and when he became a non-resident of the State of California, allegedly moving to Nevada. FTB preliminarily concluded that Mr. Hyatt remained a California resident until April 3, 1992, the date Mr.

Hyatt became the owner of a house he purchased in Las Vegas, Nevada and began moving in. Mr. Hyatt disagrees with the results of FTB's audit. A legitimate dispute exists between Mr. Hyatt and FTB concerning when he became a non-resident of the State of California, and the consequences that flow from the resolution of that dispute. The Court has determined that resolution of this dispute is properly made in the State of California and is not a part of this case. FTB, therefore, is without sufficient information or belief on which to base a response to the allegations set forth in Paragraph 1 of the Second Amended Complaint.

2. FTB is the California government agency with responsibility for enforcing California's personal income tax laws and corporate tax laws. FTB is also responsible for administering California's Homeowner and Renter Assistance Program, and other non-tax programs and delinquent debt collection functions, including child support debt collections and delinquent vehicle registration debt collections. In 1999 FTB was also given the additional responsibility of developing and implementing the statewide child support automation project. FTB employs approximately 5000 individuals and processes approximately 20 million tax returns each year. Specific to this case, FTB's statutory duty includes ensuring collection of personal income taxes from California residents and from income earned in California by non-residents. Much like the federal personal income tax system, FTB relies on the voluntary compliance and integrity of taxpayers, and a process of audits to ensure that voluntary compliance and integrity. When Mr. Hyatt filed a personal income tax return for 1991 with FTB, making

representations under penalty or perjury. FTB investigated the truth of those statements. It is that investigation or audit which provides the factual basis for this case

3. Denied.

4. Denied.

5. Denied.

6. Admitted. FTB also demands a trial by jury on all causes of action which may not be dismissed before trial.

7. This lawsuit arises out of an investigation or audit conducted by the FTB of Mr. Hyatt who filed a California personal income tax return representing that he moved from California to Nevada on October 1, 1991. Since FTB's statutory duty includes ensuring proper collection of personal income taxes from California residents and from income earned in California by non-residents, FTB conducted a "residency audit" of Mr. Hyatt. A residency audit is often used to verify the accuracy or truthfulness of a California part-year non-resident tax return. The audit process involves an investigation of whether and when the taxpayer, here Mr. Hyatt, cut his California residential ties and established new, permanent residential ties in the new state, here Nevada. The audit process also looks at the timing of income received during the relevant period. This investigation usually involves an analysis of the taxpayer's continuing California contacts and comparing those contacts with the new state. FTB's audit of Mr. Hyatt was conducted across the years 1993 to 1997. The primary reason the investigation took that amount of time was because Mr. Hyatt

refused to cooperate with FTB and refused to provide information requested by FTB to do its job. As a result, FTB was required to acquire information from third parties who possessed information about Mr. Hyatt's alleged move from California to Nevada and when that move truthfully took place. At the end of its audit, the FTB issued a proposed assessment which concluded that Mr. Hyatt did not become a California non-resident until April 3, 1992, when he purchased a house in Las Vegas, Nevada and began moving in. Mr. Hyatt did not like that proposed assessment. He then filed this lawsuit and filed an appeal in California through California's administrative protest process.

8. The results of FTB's audit of Mr. Hyatt do not confirm these allegations. In connection with its audit, FTB sent Mr. Hyatt a letter and a standard FTB form which requested certain basic information about Mr. Hyatt's residency. Mr. Hyatt hired both an attorney (in California) and a CPA to respond to FTB. Mr. Hyatt's responses to the standard FTB form, and the FTBs attempts to verify their truthfulness raised many questions about if and when Mr. Hyatt really changed his residence from California to Nevada. For instance: (1) Mr. Hyatt began by changing the date that he purportedly moved from California to Nevada; (2) Mr. Hyatt did not provide any moving receipts for his alleged move; (3) Mr. Hyatt's credit card statements provided much evidence of dining or food charges in California from September 1991 through March 1992, but only one dining charge in Nevada during that same timeframe; (4) Mr. Hyatt's daughter believed he still lived in California during the investigated timeframe and as late as 1995 he kept secret room in California with his computers and

business records; (5) Mr. Hyatt did not provide any information about where he was or stayed between September 25, 1991 and October 20, 1991, and when he finally – as part of this case – offered such an explanation, it was only after the documents which would either verify or disprove his story had been destroyed and Mr. Hyatt knew those documents had been destroyed; (6) According to recorded documents in California, Mr. Hyatt owned his California home until 1993 and his California neighbors saw him at that home; (7) The Nevada politicians and several other business contacts provided by Mr. Hyatt, when asked, did not know who Mr. Hyatt was and their records did not verify any relationship with him; (8) While Mr. Hyatt claimed to rent a low-income apartment in Las Vegas in late 1991 and early 1992, the rental managers at that apartment complex never saw him there and he paid his rent with post-dated check mailed from California; (9) The Nevada DMV reported to FTB that it had no record of Mr. Hyatt applying for a Nevada's driver's license, etc. Many other circumstances cast considerable doubt on the truthfulness of Mr. Hyatt's claim that he became a California non-resident in September 1991. In addition, it seemed that Mr. Hyatt was trying to create the appearance – but not the reality – of living in Nevada from September 1991 to April 1992 by registering to vote – a registration that later proved to be false – even though no election was being held in 1991, and signing up for religious organization, even though he did not attend services.

9. Denied.

10. FTB admits that Mr. Hyatt filed a part-year personal income tax return with the State of California for the tax year 1991, but FTB denies each and every remaining allegation set forth in paragraph 10. Because FTB had the duty under California law to investigate Mr. Hyatt's change of residency, FTB begun its audit. The lead auditor assigned to Mr. Hyatt's audit, Sheila Cox, attempted to verify the information provided by Mr. Hyatt concerning his move date, but was unable to completely do so. After conducting some investigation, Ms .Cox sent Mr. Hyatt a position letter encouraging him to provide additional information if her initial conclusions seemed incorrect. Some additional information was provided by Mr. Hyatt. Ms. Cox then proceeded to independently verify the information given to her by Mr. Hyatt. As part of this process, FTB sent letters and made phone calls and visits to third parties, mostly to third parties identified by Mr. Hyatt as allegedly possessing information about Mr. Hyatt's residence. These contacts all occurred between July 15, 1993 and September 27, 1995. Through many of the third parties, Mr. Hyatt learned of these contacts and the information that was being given by FTB to these third parties. Mr. Hyatt did not object to those third party contacts at that time. Only after he learned of FTB's proposed assessments did Mr. Hyatt allege that such contacts "invaded his privacy" or were otherwise wrongful – even though they were not.

11. FTB admits that on June 1993, it opened an audit concerning Mr. Hyatt's 1991 personal income tax return and that thereafter, it reviewed the facts and circumstances concerning Mr. Hyatt's residence and source of his income. The audit included contacts

of government agencies, individuals, and entities by auditors in both California and Nevada for the purpose of determining the correct tax. FTB denies each and every remaining allegation set forth in paragraph 11.

12. FTB admits that in accordance with FTB policies and procedures, its auditors planned and conducted trips to Nevada to review the facts and circumstances relating to Mr. Hyatt's residency, including verification of Mr. Hyatt's representations concerning his Nevada contacts and also a review which included government agencies, individuals and entities in California. In March 1995, Ms. Cox traveled to Las Vegas, Nevada with another auditor. They spent partial days trying to confirm Mr. Hyatt's claim about his change of residency. They went to a local library to look for articles about Mr. Hyatt in local newspapers. They went to the location of Mr. Hyatt's post office box to see if he received mail there. They drove to the neighborhood where Mr. Hyatt allegedly lived and looked at the Tara Avenue house that he bought in April 1992, which even then appeared to them to be vacant and had minimal landscaping. During their visit to the neighborhood, the auditors asked a mail carrier that came by, without identifying Mr. Hyatt, whether she delivered mail on Tara Avenue (she said yes but could not provide any information). On their neighborhood visits, Ms. Cox saw a package on the house's front porch and walked up to the porch, and without touching it, looked at the mailing address that was clearly visible (it was not addressed to Mr. Hyatt). On the same visit, the auditors noticed several construction workers at a site across from the house

on Tara Avenue and asked, without identifying Mr. Hyatt, if they had been working there long (they had just started working there). On their neighborhood visit, the neighborhood trash man came by, and the auditors asked, without identifying Mr. Hyatt, how much trash came from the house (answer: not much). During the neighborhood visits, the auditors also talked to a total of five people in surrounding homes, without ever identifying Mr. Hyatt, to see if they had seen anyone living at the house. The auditors also visited a local real estate office and asked the manager if the home where Mr. Hyatt claimed to live had been listed for sale recently. The rest of that field visit involved visits to the Las Vegas apartment complex where Mr. Hyatt claimed to have once lived, a Sam's Club membership store, and the office of Mr. Hyatt's accountant, which Mr. Hyatt claimed was one of his Nevada business addresses. At the apartment, the auditors spent approximately one hour looking at the apartment complex, asking the managers about their memory of Mr. Hyatt, asking one woman who lived just across from Mr. Hyatt's rented unit if she remembered him, and reviewing the items in Mr. Hyatt's rental file (including Mr. Hyatt's envelope with a Nevada return address and California postmark). At the Sam's Club, the auditors met with the manager to determine if he could provide any membership information without identifying Mr. Hyatt (the manager provided store numbers but could not provide any third party information). At the office of Mr. Hyatt's accountant, the auditors asked the receptionist if Mr. Hyatt's accountant or Mr. Hyatt himself was there. The receptionist indicated that the accountant was not present and that she did not know

who Mr. Hyatt was. Finally, during late November 1995, Ms. Cox accompanied another FTB auditor to Las Vegas to assist on the other auditor's cases. During this visit, because the other auditor's case work was in the vicinity of Mr. Hyatt's alleged residence on Tara Avenue, Ms. Cox made a brief observation of the Tara Avenue residence. She made no inquiries with other persons during this trip concerning the residency of Mr. Hyatt.

13. FTB admits that it sent requests for information to government agencies, individuals and entities in California and Nevada, including requests made on FTB Form 4973-39 pursuant to California Revenue and Tax Code Section 19504. The Second Amended Complaint allegations relating to FTB's right and authority to request information with FTB Form 4973 have been dismissed by the Court, so no answer is required to any allegations concerning FTB's use of that form. FTB denies each and every remaining allegation set forth in paragraph 13.

14. The Second Amended Complaint allegations relating to FTB's right and authority to request information with FTB Form 4973 have been dismissed by the Court, so no answer is required to any allegations concerning FTB's use of that form. FTB denies each and every remaining allegation set forth in paragraph 14.

15. FTB admits that after it completed its audit of Mr. Hyatt's 1991 tax return it issued a Notice of Proposed Assessment, that its review determined that Mr Hyatt severed his residential ties with California on April 3, 1992, and that additional income tax and a

fraud penalty were proposed. FTB denies each and every remaining allegation set forth in paragraph 15.

16. FTB admits that after it completed its audit of Mr. Hyatt's 1991 tax return it issued a Notice of Proposed Assessment that, its review determined that Mr. Hyatt severed his residential ties with California on April 3, 1992, and that additional income tax and fraud penalty were proposed. FTB did so after giving Mr. Hyatt every conceivable opportunity to provide all evidence and information to it concerning his alleged change in residency. FTB denies each and every remaining allegation set forth in paragraph 16.

17. Denied. The Court has already decided that determining the date of, and the consequence of, Mr. Hyatt's alleged change in residency should be and is being made in the State of California.

18. FTB admits that on or about April 1, 1996, Mr. Hyatt received a letter from the FTB notifying Mr. Hyatt of the FTB's proposed determination into the examination of Mr. Hyatt's residency status for 1992 and proposing additional income tax and fraud penalty. FTB denies each and every remaining allegation set forth in paragraph 18.

19. FTB admits that on or about April 10, 1997, Mr. Hyatt received a letter from the FTB notifying Mr. Hyatt of changes in the proposed assessment for the 1992 tax year as result of the review process, providing revised schedules to the tentative determination and informing Mr. Hyatt that once the case was closed, Mr. Hyatt would receive the Notice of Proposed Assessment. On August 14, 1997, Mr. Hyatt was sent a Notice of Proposed Assessment from FTB proposing assessment of additional income tax and penalty. The

proposed assessments were based on Mr. Hyatt's 1992 income, which was substantial. The determination of the amount received before April 3, 1992 could not be made due to Mr. Hyatt's failure to provide documentation substantiating the timing of receipt of his income. FTB denies each and every remaining allegation set forth in paragraph 19.

20. Denied.

21. FTB admits that on or about August 14, 1997, Mr. Hyatt received a Notice of Proposed Assessment from FTB for 1992 proposing assessment of additional income tax and penalty. The proposed tax was calculated based on Mr. Hyatt's 1992 income. The amount received prior to April 3, 1992 could not be determined due to Mr. Hyatt's failure to provide documentation substantiating the time of receipt of his income. FTB denies each and every remaining allegation set forth in paragraph 21.

22. Denied.

23. FTB admits that the proposed assessments for 1991 and 1992 are still under review by the FTB as result of Mr. Hyatt's appeal or protest of the FTB's proposed determinations and because Mr Hyatt has refused to provide relevant information and documentation requested by the FTB necessary to calculate the correct tax. FTB denies each and every remaining allegation set forth in paragraph 23.

24. Denied.

25. Denied.

26. FTB admits that Nevada's courts have personal jurisdiction over FTB in this action, but not

subject matter jurisdiction. FTB denies each and every remaining allegation set forth in paragraph 26.

27. Denied.

FIRST CAUSE OF ACTION

28. The Court has dismissed Mr. Hyatt's First Cause of Action, so no answer is required to the allegations set forth in Complaint paragraphs 28 through 32.

29. The Court has dismissed Mr. Hyatt's First Cause of Action, so no answer is required to the allegations set forth in Complaint paragraphs 28 through 32.

30. The Court has dismissed Mr. Hyatt's First Cause of Action, so no answer is required to the allegations set forth in Complaint paragraphs 28 through 32.

31. The Court has dismissed Mr. Hyatt's First Cause of Action, so no answer is required to the allegations set forth in Complaint paragraphs 28 through 32.

32. The Court has dismissed Mr. Hyatt's First Cause of Action, so no answer is required to the allegations set forth in Complaint paragraphs 28 through 32.

SECOND CAUSE OF ACTION

33. FTB reasserts its same responses to paragraphs 1 through 32.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

THIRD CAUSE OF ACTION

44. The FTB reasserts its same responses to paragraphs 1 through 43.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

FORTH CAUSE OF ACTION

53. The FTB reasserts its same responses to paragraphs 1 through 52.

54. The Second Amended Complaint allegations relating to the FTB's right and authority to request information with FTB Form 4973-39 pursuant to California Revenue and Tax Code Section 19504 or otherwise, have been dismissed by the Court, so no answer is required to the allegations concerning use of the Demand to Furnish Information form and FTB denies each and every remaining allegation.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

FIFTH CAUSE OF ACTION

62. The FTB reasserts its same responses to paragraphs 1 through 61.

63. The Second Amended Complaint allegations relating to the FTB's right and authority to request information with FTB Form 4973-39 pursuant to California Revenue and Tax Code Section 19504 or otherwise, have been dismissed by the Court, so no answer is required to the allegations concerning use of the Demand to Furnish Information form and FTB denies each and every remaining allegation.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

SIXTH CAUSE OF ACTION

70. The FTB reasserts its same responses to paragraphs 1 through 69.

71. Denied.

72. The Second Amended Complaint allegations relating to the FTB's right and authority to request information with FTB Form 4973-39 pursuant to California Revenue and Tax Code Section 19504 or otherwise, have been dismissed by the Court, so no answer is required to the allegations concerning use of the Demand to Furnish Information form. The information included on the form was reasonably necessary at the time to identify Mr. Hyatt in order to gather information relevant to the determination of the correct tax and FTB denies each and every remaining allegation.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

SEVENTH CAUSE OF ACTION

79. FTB reasserts its same responses to paragraphs 1 through 78.

80. Mr. Hyatt did not pay California income tax from the early 1970's until 1991 when he began receiving income from what was commonly referred to as the '516 patent." By mid-1993, Mr. Hyatt was known in the electronics industry as a "submariner," that is, one who files numerous, vague patent applications which are then left pending for many years waiting like a submarine under the water for technology to develop and then surfaces to assert claims to the later developed or conceived technology

arguing that it is described in their earlier-filed specification. Through the '516 patent, Mr. Hyatt contended that he was the "inventor of the microchip processor." However, an interference action by Gary Boone of Texas instruments proved that Mr. Boone was the true inventor of the claimed technology, not Mr. Hyatt. Prior to the final decision in that case, Mr. Hyatt was able to negotiate settlement agreements with numerous companies based on his representation of ownership of the microchip processor technology. Before it was proven that Mr. Hyatt was not the inventor of the microchip processor, some companies agreed to pay him money to avoid litigation and to use the '516 patent assuming he was the rightful owner of the patent. FTB denies each and every remaining allegation set forth in paragraph 80.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

EIGHTH CAUSE OF ACTION

92. FTB reasserts its same responses to paragraphs 1 through 91.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

102. Except as specifically admitted, denied or alleged above, FTB denies each and every remaining allegation of the Second Amended Complaint.

AFFIRMATIVE DEFENSES

1. A bonafide dispute exists between Mr. Hyatt and FTB concerning Mr. Hyatt's residency and the source of his income. That dispute is being resolved in the State of California as the proper forum.

2. All actions taken by FTB concerning Mr. Hyatt were lawful, justified, and privileged.

3. No contract or confidential relationship existed between Mr. Hyatt and FTB.

4. Mr. Hyatt had no reasonable expectation of privacy in the information utilized by FTB to third parties in its audit of Mr. Hyatt.

5. The information utilized by FTB of and concerning Mr. Hyatt was already a matter of public record or already found in the public realm at the time of its utilization.

6. FTB's litigation roster concerns matters of public interest and/or public concern, and contains true information.

7. Mr. Hyatt is a public figure.

8. Mr. Hyatt failed to exhaust his administrative remedies.

9. Mr. Hyatt had failed to state a claim upon which relief can be granted.

10. Mr. Hyatt's claims are barred by the statues of limitation and frauds, and the doctrines of waiver, estoppel, laches, assumption of risk and res judicata.

11. Mr. Hyatt's claims were not plead with particularity as required by NRCP 9(b).

12. Mr. Hyatt's damages, if any were sustained, were caused by either his own actions or by third parties for whom FTB is not responsible or by his own failure to mitigate.

13. Mr. Hyatt's claims are barred because of California's sovereign immunity from suit and the full faith and credit and comity that immunity enjoys.

14. FTB's actions taken as quasi-judicial officials are immune from suit.

15. Mr. Hyatt's claims are beyond the subject matter jurisdiction of Nevada's courts.

16. Mr. Hyatt's claims are barred by U.S.C. §7421(a) which provides: "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person against whom such tax was assessed."

17. A statutory remedy in California, which has not been pled or asserted by Mr. Hyatt, may exist for the harms Mr. Hyatt claims he sustained, if he really did sustain any harm.

18. Mr. Hyatt's claims for punitive damages are barred by NRS Chapter 42, Nevada's Constitution and the U.S. Constitution.

19. To the extent additional affirmative defenses are discovered, FTB reserves the right to amend this answer.

* * *

WHEREFORE, judgment should be entered in FTB's favor and against Mr. Hyatt as follows:

1. FTB respectfully requests that Mr. Hyatt take nothing by way of his Second Amended Complaint;

2. For an award of reasonable attorneys' fees and costs incurred in the defense of this action; and

3. For such other and further relief as this Court or the jury deems just and proper.

Dated this 26th day of May, 2006.

IN THE SUPREME COURT OF THE STATE OF NEVADA

Nos. 35559 & 36390

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,
Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE NANCY M. SAITTA, DISTRICT JUDGE,
Respondents,

and

GILBERT P. HYATT,
Real Party in Interest.

Filed: April 4, 2002

ORDER GRANTING PETITION FOR REHEARING, VACATING PREVIOUS ORDER, GRANTING PETITION FOR A WRIT OF MANDAMUS IN PART IN DOCKET NO. 36390, AND GRANTING PETITION FOR A WRIT OF PROHIBITION IN PART IN DOCKET NO. 35549

In Docket No. 35549, Franchise Tax Board petitioned this court for a writ of mandamus or prohibition, challenging the district court's determination that certain documents were not protected by attorney-client, work product or

deliberative process privileges, and its order directing Franchise Tax Board to release the documents to Gilbert Hyatt. In Docket No. 36390, Franchise Tax Board separately petitioned this court for a writ of mandamus, challenging the district court's denial of its motion for summary judgment or dismissal, and contending that the district court lacks subject matter jurisdiction over the underlying tort claims because Franchise Tax Board is immune from liability under California law. Alternatively, Franchise Tax Board sought a writ of prohibition or mandamus limiting the scope of the underlying case to its Nevada-related conduct.

On June 13, 2001, we granted the petition in Docket No. 36390 on the basis that Hyatt did not produce sufficient facts to establish the existence of a genuine dispute justifying denial of the summary judgment motion. Because our decision rendered the petition in Docket No. 35549 moot, we dismissed it. Hyatt petitioned for rehearing in Docket No. 36390 on July 5, 2001, and in response to our July 13, 2001 order, Franchise Tax Board answered on August 7, 2001. Having considered the parties' documents and the entire record before us, we grant Hyatt's petition for rehearing, vacate our June 13, 2001 order and issue this order in its place.

We conclude that the district court should have declined to exercise its jurisdiction over the underlying negligence claim under comity principles. Therefore, we grant the petition in Docket No. 36390 with respect to the negligence claim, and deny it with respect to the intentional tort claims. We also deny the alternative petition to limit the scope of trial. We

further conclude that, except for document FTB No. 07381, which is protected by the attorney work-product privilege, the district court did not exceed its jurisdiction by ordering Franchise Tax Board to release the documents at issue because Franchise Tax Board has not demonstrated that they were privileged. Therefore, we grant the petition for a writ of prohibition[1] in Docket No. 35549 with respect to FTB NO. 07381, and deny the petition with respect to all the other documents.

BACKGROUND

The underlying tort action arises out of Franchise Tax Board's audit of Hyatt – a long-time California resident who moved to Clark County, Nevada – to determine whether Hyatt underpaid California state income taxes for 1991 and 1992. After the audit, Franchise Tax Board assessed substantial additional taxes and penalties against Hyatt. Hyatt formally protested the assessments in California through the state's administrative process, and sued Franchise Tax Board in Clark County District Court for several intentional torts and one negligent act allegedly committed during the audit.

During discovery in the district court case, Hyatt sought the release of all the documents Franchise Tax Board had used in the audit, but subsequently redacted or withheld. Franchise Tax Board opposed Hyatt's motion to compel on the basis that many of the documents were privileged. The district court, acting

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[1] Prohibition is a more appropriate remedy than mandamus for the prevention of improper discovery. *Wardleigh v. District Court*, 111 Nev. 345, 350, 891 P.2d 1180, 1183 (1995).

on a discovery commissioner's recommendation, concluded that most of the documents were not privileged and ordered Franchise Tax Board to release those documents. The district court also entered a protective order governing the parties' disclosure of confidential information. The writ petition in Docket No. 35549 challenges those decisions.

Franchise Tax Board then moved for summary judgment, or dismissal under NRCP 12(h)(3), arguing that the district court lacked subject matter jurisdiction because principles of sovereign immunity, full faith and credit, choice of law, comity and administrative exhaustion all required the application of California law, and under California Law Franchise Tax Board is immune from all tort liability. The district court denied the motion. The writ petition in Docket No. 36390 challenges that decision. The Multistate Tax Commission has filed an amicus curiae brief in support of Franchise Tax Board's comity argument.

PROPRIETY OF WRIT RELIEF

We may issue an extraordinary writ at our discretion to compel the district court to perform a required act,[2] or to control discretion exercised arbitrarily or capriciously,[3] or to arrest proceedings that exceed the court's jurisdiction.[4] An extraordinary

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[2] NRS 34.160 (mandamus).

[3] *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981) (mandamus).

[4] NRS 34.320 (prohibition).

writ is not available if petitioner has a plain, speedy and adequate remedy in the ordinary course of law.[5]

A petition for a writ of prohibition may be used to challenge a discovery order requiring the disclosure of privileged information.[6] A petition for a writ of mandamus may be used to challenge an order denying summary judgment or dismissal; however, we generally decline to consider such petitions because so few of them warrant extraordinary relief.[7] We may nevertheless choose to exercise our discretion and intervene, as we do here, to clarify an important issue of law and promote the interests of judicial economy.[8]

DOCKET NO. 36390

Nevada and California have both generally waived their sovereign immunity from suit, but not their Eleventh Amendment immunity from suit in federal court, and have extended the waivers to their state agencies or public employees, except when state statutes expressly provide immunity.[9] Nevada has expressly provided its state agencies with immunity for discretionary acts, unless the acts are taken in bad faith, but not for operational or ministerial acts, or for intentional torts committed within the course and scope of employment.[10] California has expressly

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[5] NRS 34.170; NRS. 34.330.

[6] Wardleigh, 111 Nev. at 350-51, 891 P.2d at 1183-84.

[7] *Smith v. District Court*, 113 Nev. 1343, 950 P.2d 280 (1997).

[8] *Id.*

[9] NRS 41.031; Cal Const. Art. 3, § 5; Cal. Gov't Code § 820.

[10] *See* NRS 41.032(2); *Foster v. Washoe County*, 114 Nev. 936, 941, 964 P.2d 788, 791 (1998); *State, Dep't Hum. Res. v. Jimenez*, 113

provided its state taxation agency, Franchise Tax Board, with complete immunity.[11] The fundamental question presented is which state's law applies, or should apply.

JURISDICTION

Preliminarily, we reject Franchise Tax Board's arguments that the doctrines of sovereign immunity, full faith and credit, choice of law, or administrative exhaustion deprive the district court of subject matter jurisdiction over Hyatt's tort claims. First, although California is immune from Hyatt's suit in federal courts under the Eleventh Amendment, it is not immune in Nevada courts.[12] Second, the Full Faith and Credit Clause does not require Nevada to apply California's law in violation of its own legitimate public policy.[13] Third, the doctrines of sovereign immunity and full faith and credit determine the choice of law with respect to the district court's jurisdiction,[14] while Nevada law is presumed to govern with respect to the underlying torts.[15] Fourth, Hyatt's tort claims, although arising from the audit, are separate from the administrative proceeding, and the exhaustion doctrine does not apply. The district court

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Nev. 356, 364, 935 P.2d 274, 278 (1997); *Falline v. GNLV Corp.*, 107 Nev. 1004, 1009, 823 P.2d 888, 892 (1991).

[11] *See* Cal. Gov't Code §860.2; *Mitchell v. Franchise Tax Board*, 228 Cal. Rptr. 750 (Ct. App. 1986).

[12] *Nevada v. Hall*, 440 U.S. 410, 414-21 (1979).

[13] *Id.* at 421-24.

[14] *Id.* at 414-21.

[15] *Motenko v. MGM Dist., Inc.*, 112 Nev. 1038, 1041, 921 P.2d 933, 935 (1996).

had jurisdiction; however, we must decide whether it should decline to exercise its jurisdiction under the doctrine of comity.

COMITY

The doctrine of comity is an accommodation policy, under which the courts of one state voluntarily give effect to the laws and judicial decisions of another state out of deference and respect, to promote harmonious interstate relations.[16] In deciding whether to respect California's grant of immunity to a California state agency, a Nevada court should give due regard to the duties, obligations, rights and convenience of Nevada's citizens and persons within the court's protection, and consider whether granting California's law comity would contravene Nevada's policies or interests.[17] Here, we conclude that the district court should have refrained from exercising its jurisdiction over the negligence claim under the comity doctrine, but that it properly exercised its jurisdiction over the intentional tort claims.

NEGLIGENT ACTS

Although Nevada has not expressly granted its state agencies immunity for all negligent acts, California has granted the Franchise Tax Board such immunity.[18] We conclude that affording Franchise Tax Board statutory immunity for negligent acts does not contravene any Nevada interest in this case. An investigation is generally considered to be a

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[16] *Nevada v. Hall*, 440 U.S. at 424-27; *Mianecki v. District Court*, 99 Nev. 93, 98, 658 P.2d 422, 424-25 (1983).

[17] *Mianecki*, 99 Nev. at 98, 658 P.2d at 425.

[18] Cal. Gov't Code §860.2; *see Mitchell*, 228 Cal. Rptr. At 752.

discretionary function,[19] and Nevada provides its agencies with immunity for the performance of a discretionary function even if the discretion is abused.[20] Thus, Nevada's and California's interests are similar with respect to Hyatt's negligence claim.

INTENTIONAL TORTS

In contrast, we conclude that affording Franchise Tax Board statutory immunity for intentional torts does contravene Nevada's policies and interests in this case. As previously stated, Nevada does not allow its agencies to claim immunity for discretionary acts taken in bad faith, or for intentional torts committed in the course and scope of employment. Hyatt's complaint alleges that Franchise Tax Board employees conducted the audit in bad faith, and committed intentional torts during their investigation. We believe that greater weight is to be accorded Nevada's interest in protecting its citizens from injurious intentional torts and bad faith acts committed by sister states' government employees, than California's policy favoring complete immunity for its taxation agency.[21] Because we conclude that the district court properly exercised its jurisdiction over the intentional tort claims, we must decide whether our intervention is warranted to prevent the release of documents that Franchise Tax Board asserts are privileged.

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[19] *Foster*, 114 Nev. At 941-43, 964 P.2d at 792.

[20] NRS 41.032(2).

[21] *See Mianecki*, 99 Nev. At 98, 658 P.2d at 425.

DOCKET NO. 35549

Franchise Tax Board invoked the deliberative process, attorney-client and work-product privileges as barriers to the discovery of various documents used or produced during its audit. The district court decided that most of the documents were not protected by these privileges, and ordered Franchise Tax Board to release them. With one exception, we conclude that the district court did not exceed its jurisdiction by ordering Franchise Tax Board to release the documents.

The deliberative process privilege does not apply because the documents at issue were not predecisional; that is, they were not precursors to the adoption of agency policy, but were instead related to the enforcement of already-adopted policies.[22] And if the privilege were to apply, it would be overridden by Hyatt's demonstrated need for the documents based on his claims of fraud and government misconduct.[23]

The attorney-client privilege does not apply because Franchise Tax Board did not demonstrate (1) that in-house-counsel Jovanovich was acting as an attorney, providing legal opinions, rather than as an employee participating in the audit process,[24] or (2) that the communications between Ms. Jovanovich and

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[22] *See Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 866-68 (D.C. Cir. 1980).

[23] *See In re Sealed Case*, 121 F.3d 729, 737-38 (D.C. Cir. 1997).

[24] *See Upjohn Co. v. United States*, 449 U.S. 383, 389-97 (1981); *United States v. Chen*, 99 F.3d 1495, 1501-02 (9th Cir. 1996); *United States v. Rowe*, 96 F.3d 1294, 1297 (9th Cir. 1996); *Texaco Puerto Rico v. Department of Consumer Aff.*, 60 F.3d 867, 884 (1st Cir. 1995).

other Franchise Tax Board employees were kept confidential within the agency.[25]

The work-product privilege does apply, however, to document FTB No. 07381. This memorandum documenting a telephone conversation between Franchise Tax Board attorneys Jovanovich and Gould should be protected from disclosure. When the memorandum was generated, Jovanovich was acting in her role as an attorney representing Franchise Tax Board, as was Gould. The memorandum expresses these attorneys' mental impressions and opinions regarding the possibility of legal action being taken by Franchise Tax Board or Hyatt. Thus, this one document is protected by the attorney work-product privilege.[26]

Finally, although Franchise Tax Board also challenges the district court's protective order, we decline to review the propriety of that discovery order in this writ proceeding. Although an extraordinary writ may be warranted to avoid the irreparable injury that would result from a discovery order requiring disclosure of privileged information, extraordinary writs are not generally available to review discovery orders.[27] Franchise Tax Board has a plain, speedy and adequate remedy; it may challenge the order on appeal if it is aggrieved by the district court's final judgment.

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[25] *See Coastal States*, 617 F.2d at 862-64.

[26] *See Wardleigh*, 111 Nev. at 357, 891 P.2d at 1188.

[27] *Clark County Liquor v. Clark*, 102 Nev. 654, 659, 730 P.2d 443, 447 (1986).

CONCLUSION

We conclude that the district court should have declined to exercise jurisdiction over the negligence claim as a matter of comity. Accordingly, we grant the petition in Docket No. 36390 in part; the clerk of this court shall issue a writ of mandamus directing the district court to grant Franchise Tax Board's motion for summary judgment as to the negligence claim. We deny the petition in Docket No. 36390 with respect to the intentional tort claims, and we deny the alternative petition to limit the scope of trial.

We conclude that the district court exceeded its jurisdiction by ordering the release of one privileged document, but that Franchise Tax Board has not demonstrated that the district court exceed its jurisdiction by ordering it to release any of the other discovery documents at issue. Accordingly, we grant the petition in Docket No. 35549 in part; the clerk of this court shall issue a writ of prohibition prohibiting the district court from requiring Franchise Tax Board to release document FTB No. 07381. We deny the writ petition in Docket No. 35549 with respect to all other documents.

We vacate our stay of the district court proceedings.

It is so ORDERED.[28]

s/Maupin, C.J.
Maupin

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[28] The Honorable Nancy Becker, Justice, voluntarily recused herself from participation in the decision of this matter.

s/Young, J.	s/Shearing, J.
Young	Shearing
s/Agosti, J.	s/Leavitt, J.
Agosti	Leavitt

ROSE, J., concurring in part and dissenting in part:

I would not grant comity to the petitioners in this case and would grant immunity only as given by the law of Nevada. In all other respects, I concur with the majority opinion.

In *Mianecki v. District Court*,[1] we were faced with a similar issue when the State of Wisconsin requested comity be granted by Nevada courts in order to recognize Wisconsin's sovereign immunity. In refusing to grant comity and recognize Wisconsin's sovereign immunity, we stated:

> In general, comity is a principle whereby the courts of one jurisdiction may give effect to the laws and judicial decisions of another jurisdiction out of deference and respect. The principle is appropriately invoked according to the sound discretion of the court acting without obligation. "[I]n considering comity, there should be due regard by the court to the duties, obligations, rights and convenience of its own citizens and of persons who are within the protection of its jurisdiction." With this in mind, we believe greater weight is to be

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[1] 99 Nev. 93, 98, 658 P.2d 422, 424-35 (1983) (internal citations omitted).

> accorded Nevada's interest in protecting its citizens from injurious operational acts committed within its borders by employees of sister states, than Wisconsin's policy favoring governmental immunity. Therefore, we hold that the law of Wisconsin should not be granted comity where to do so would be contrary to the policies of this state.

Based on this very similar case, I would not grant comity to California, and I would extend immunity to the agents of California only to the extent that such immunity is given them by Nevada law. Denying a grant of comity is not uncommon, as California has denied comity to the state of Nevada in years past.[2]

s/Rose, J.
Rose

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[2] *Nevada v. Hall*, 440 U.S. 410, 418 (1979).

No. 02-42

In the
Supreme Court of the United States

FRANCHISE TAX BOARD OF
THE STATE OF CALIFORNIA,
Petitioner,

v.

GILBERT P. HYATT, ET AL.

On Writ of Certiorari to the Supreme Court of Nevada

ORAL ARGUMENT TRANSCRIPT EXCERPTS

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:02 a.m.

APPEARANCES:

FELIX LEATHERWOOD, ESQ.,
Deputy Attorney General
Los Angeles, California; on behalf of the Petitioner.

H. BARTOW FARR, III, ESQ.,
Los Angeles, California; on behalf of Respondent

February 24, 2003

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[4] QUESTION: Mr. Leatherwood, may I ask you a threshold question? Some of your friends in this case have invited an overruling of Nevada against Hall. Of course, California was favored by that decision. Do you join in the plea to overrule Nevada v. Hall, or do you say this case is different because it involves core sovereign functions?

MR. LEATHERWOOD: Justice Ginsberg, we do not join in the chorus to overrule Nevada v. Hall. This case is different. This case goes to footnote 24 of Nevada v. Hall. It's our feeling that Nevada v. Hall is good law in the sense that it does – it does not implicate another state managing another state's core sovereign function. It's – Nevada v. Hall was strictly an automobile accident.

* * *

[12] QUESTION: It doesn't matter. I mean, we're trying to get the – we're trying to get the analysis of it, and I'm having exactly the same problem. Imagine that there, California did say there is absolute immunity, even if you beat somebody up, absolute tort immunity. Okay? Even for beating people up. Now, suppose they did have that; you could prosecute it as a crime. Now you're in Nevada, and they say, the plaintiff, he beat me up, he came across the state line, down from Lake Tahoe. He was in a bad mood, lost too much money at the casino, and he beat me up. All right? Now, can Nevada bring that lawsuit or not? That's, I think, what Justice Stevens' question was.

MR. LEATHERWOOD: Well – well, I understand that, Your Honor. My position is that even though that law does not exist in California –

[13] QUESTION: Yes.

MR. LEATHERWOOD: – but applying –

QUESTION: If it did.

MR. LEATHERWOOD: – applying it – my – our particular theory –

QUESTION: Yes.

MR. LEATHERWOOD: – that, yes, we – then Nevada would be obligated under the Full Faith and Credit Clause to apply that particular law. But –

QUESTION: And, therefore, you could not bring the lawsuit in Nevada about somebody beating somebody up.

MR. LEATHERWOOD: If –

QUESTION: If that were the law in California.

MR. LEATHERWOOD: – if that were – if that were the case. But –

QUESTION: Yeah, okay.

MR. LEATHERWOOD: – in this particular case, that's illegal in California and that's illegal in Nevada.

QUESTION: So how, then, do we reconcile that position, where we're back to our starting place, with the fact that he could bring an action if on his way down from Lake Tahoe in the state car, he happened to drive a little negligently and ran somebody over? I mean, that's Nevada v. Hall, just reverse the states.

MR. LEATHERWOOD: No, and we're agreeing with [14] Nevada v. Hall.

QUESTION: I know. So this is why we're having a problem.

* * *

[17] QUESTION: Suppose the tax collector were driving negligently in Las Vegas. It's very important for the tax collector to go examine the record, and he's driving negligently. What –

MR. LEATHERWOOD: I think, under Nevada v. Hall, he would be – he would be subject to negligent liability. It's not connected to a core silent function because the function here is – the function here is a tax [18] investigation, whereas, driving is something that you can investigate independent of the tax process itself.

QUESTION: So suppose that we – we conclude that footnote 24 does not provide sufficient guidance for us to have a stable jurisprudence and that you will lose unless Nevada versus Hall is overruled. Would you then ask us to overrule Nevada versus Hall?

MR. LEATHERWOOD: Your Honor –

QUESTION: I know you don't want to entertain that possibility, but suppose that's what we conclude.

MR. LEATHERWOOD: Well, we – we've thought about this, Your Honor, of course, and we would accept a win, if that's the Court's direction, through overruling Nevada v. Hall, but it's our contention that the Court doesn't have to go that far to get – to get to this point. The Court can literally analogize to the special protections that are provided to state tax systems within the federal system itself.

* * *

[24] QUESTION: Well, are principles of comity dictated by the Constitution? Suppose –

MR. FARR: They are –

QUESTION: – suppose Nevada said they were not going to grant comity?

MR. FARR: That's correct, yes. And I don't think there is a federally enforceable law of state comity, but I think that is the system that has existed essentially between sovereigns for much longer than the United States is –

QUESTION: Well, is it your position then the private plaintiff can always bring suit against a state in [25] the courts of another state?

MR. FARR: Well, the first question, of course, is whether the court has legislative – the first Full Faith and Credit question is whether the court in which the suit is brought has legislative jurisdiction. So there is a requirement that that state have constitutionally sufficient contacts with the law –

QUESTION: Well, then under due process. Well, that's easy to satisfy.

MR. FARR: So assuming that they've satisfied that, they are entitled to bring a suit. Then the question is whether the state – and I – and I believe at that point the state is free to apply its own laws to protect its own interests. I think that's what the Full Faith and Credit Clause allows. And it is the doctrine of comity that provides the acknowledgment of the state – the other state's interests. And that's typically, in fact, what's happened since Nevada –

QUESTION: It's very –

MR. FARR: – versus Hall –

QUESTION: – it's very odd to me that California can't be sued in its own courts and it can't be sued in a federal court, but it can be sued in a Nevada court,

which, if we follow that declension really has the – has the least interest in maintaining the dignity of [26] the State of California.

* * *

[27] QUESTION: Is – how does Alden fit into this? In Alden, I take it the court now – we've held that a citizen of Maine suing in the State of Maine's courts alleging that Maine had violated a federal law can't do it. Sovereign immunity Right? That's Alden.

All right. Suppose the citizen of Maine walks into a New Hampshire court and brings the same lawsuit [28] against Maine, assuming New Hampshire has appropriate jurisdiction under its own laws.

MR. FARR: Uh-huh.

QUESTION: Do we get a different result?

MR. FARR: Okay, I think that is not a question that is within the notion of the question in this case.

QUESTION: No, no, well –

MR. FARR: I'm sorry. I –

QUESTION: – you see, what I –

MR. FARR: Excuse me.

QUESTION: – nonetheless, although –

MR. FARR: No, I –

QUESTION: – what I'm trying to do is – is sort out what, in my mind, are a set of impossible anomalies, and that's why I ask you that question.

MR. FARR: I'm sorry. I started to answer in the wrong way.

QUESTION: Go ahead.

MR. FARR: What I – I reserve, of course, the point, always, that I don't believe this is within the question presented.

QUESTION: Yeah, yeah, of course.

MR. FARR: But I actually was going – what I meant to say is that I don't think it's the same kind of question in the sense that I think still when you're [29] talking about enforcement of a federal cause of action in another state, that is still really a federal-state question.

QUESTION: See, but –

MR. FARR: That's still –

QUESTION: – your answer, then –

MR. FARR: – an evolving question.

QUESTION: – your answer to my question is Alden cannot be avoided simply by the Maine citizen walking into a New Hampshire court and bringing the same case.

MR. FARR: That's correct.

QUESTION: All right.

MR. FARR: I think that is –

QUESTION: And I would guess that's right.

MR. FARR: – still a federal-state –

QUESTION: All right, assuming that's right –

MR. FARR: – I think that is still a federal-state issue.

QUESTION: – assuming that's right, now, look at the tremendous anomaly, which you were just about to address, and I want to be sure you do. Our citizen of Maine walks into the New Hampshire court and

sues the State of Maine under federal law. And the answer is, he can't do it because of sovereign immunity. Our citizen of [30] Maine does the same thing, but this time his cause of action is state law. And now you say he can do it.

MR. FARR: That's right. And –

QUESTION: And the only difference between the two cases is that his cause of action is federal law in the first case, and he can't sue the state; but state law in the second case, and he can, which, of course, means that the law of New Hampshire binds Maine in a way that federal law cannot. Now, that, to me, I just can't – that, to me, seems so anomalous that – that I'd like an explanation –

MR. FARR: Well –

QUESTION: – if you can give it. And you see how I'm thinking of it as connected here, because the facts here are just part of that general anomaly.

MR. FARR: That's correct. Actually, Justice Breyer, I think that's something that the court, to some extent, addressed in Alden itself –

QUESTION: Uh-huh.

MR. FARR: – in distinguishing the opinion in Nevada versus Hall, when it noted that when you get into the situation of a state being sued in the courts of another state and, as in Nevada versus Hall, under a state cause of action, you have now implicated the sovereignty of a second sovereign. So when one is now looking at the [31] – at the issues of sovereign immunity, one is looking at a different platform of issues and also at a different historical base.

QUESTION: But that seems to make their case even harder. It would be difficult to conceive that the framers thought that Virginia could be sued in Pennsylvania but not in a federal court. I would think that the presumption would be that this was an even stronger case for the exercise of sovereign immunity than when all of the citizens of the union are involved as in the Alden situation –

MR. FARR: Well, I think that –

QUESTION: – in the Eleventh Amendment.

MR. FARR: I mean, I think that there are two things going on. I mean, first of all, the question is not whether they can be sued, but if not, why not. For example, with Pennsylvania and Virginia, as I'm sure the Court is aware, had a – Nathan versus Virginia is a case in which that very situation came up. But in the courts of Pennsylvania, the Pennsylvania Attorney General urged its own courts to recognize sovereign immunity. So that could naturally fit within the idea that Schooner Exchange has made clear, which is that when you're talking about co-equal sovereigns of that nature, one is talking about sovereignty that – excuse me, immunity that is extended [32] as a matter of comity, not as a matter of absolute right of the other sovereign. And the reason is – excuse me – the reason is that if you don't allow the sovereign to execute its own laws within its own territory, you're depriving that sovereign of part of its sovereignty.

QUESTION: Well, doesn't our original jurisdiction as the states between states bear something on this question?

MR. FARR: It bears a little bit. But, of course, Article III itself is not a exclusive jurisdiction

provision. The Section 1251 provides exclusive jurisdiction with respect to suits between states.

QUESTION: The idea that the framers would provide for its original jurisdiction in the Supreme Court in – for suits by one state against another suggests they thought it might be pretty hard to bring such a suit anywhere else.

MR. FARR: Well, and they – certainly as a practical matter, they would have been right, Mr. Chief Justice. I mean, as a practical matter, it has always been difficult to bring a suit against a state, either in its own courts or in the courts of another state. I mean, even since Nevada versus Hall, typically states have granted immunity to other states for when they're sued in their own courts. And if they haven't granted absolute [33] immunity, what they have done, which I think is an important principle emerging – emerging principle of comity, is they have tended to look at their own immunity to see what kinds of suits could be brought against them and to try, then, to grant to the – to the outside sovereign that same type of immunity.

QUESTION: Mr. Farr, have you found other examples around the country of suits by citizens of one state against another state in the other state's courts?

MR. FARR: I –

QUESTION: Is this relatively rare, or is it happening? And in what context is it happening?

MR. FARR: It's relatively rare, and – but there have been some suits. There are a few of them cited in our red brief, if I can find the page number, pages 38 and 39. The – there are suits, for example, negligence

suits involving the release of dangerous persons within another state who have created injury to citizens –

QUESTION: Uh-huh.

MR. FARR: – of that state. There are more commercial-type things involving contracts or – one, in particular, is a it for invasion of privacy when someone who wrote a book disclosed information. In general, though, Justice O'Connor, as I say, some of those suits, the courts have just said, we're not going to hear them [34] whether you have a valid cause of action or not. We're simply not going to – going to recognize that in our courts because of the sovereignty of the defendant. Other courts have said, yes, we will open our courts, but we are going to look to our own immunity to try to have essentially a baseline to measure the sort of immunity that we are going to –

QUESTION: Mr. Farr, are you saying –

MR. FARR: – accept.

QUESTION: – that that, too, is just a matter of comity?

MR. FARR: I do think that that's—

QUESTION: Doesn't –

MR. FARR: – just a matter –

* * *

[35] MR. FARR: But, as I say, the – the notion that comity is – is something that – that doesn't have a force, even though it's not federal enforceable, it seems to me is a little bit of a misperception. Because, again, if one goes back to the notion of the law of nations or separate sovereigns, comity essentially has been the

provision that [36] governs their relations since well before the convention.

* * *

[41] QUESTION: Comity is something like a hearty handshake. I mean, it – it's something that you can't put any – any force to.

MR. FARR: That's – that's true in one sense, Mr. Chief Justice. I mean, when I say it's not – that there's no federally enforceable state law of comity, I – that's true. But at the same time, I mean, the Court's decisions about comity since back in the late 18th century have emphasized that it is a serious doctrine. It's a doctrine built of respect for – for other sovereigns. And in particular – and I think this – this is – also goes to the practical problem that Justices Kennedy and Breyer are asking about – it also does have a healthy measure of self interest in it.

I mean, when – when you are talking about co-[42] equal sovereigns, any sovereign that is exercising jurisdiction over another sovereign understands that that's – the first sovereign – or the second sovereign has the same power and authority over it.

QUESTION: Is – is the question of comity one that has a federal component so that this court should weigh in on when it has to be exercised?

MR. FARR: I don't believe so state versus state, Justice O'Connor. Or course, in the – in the types of cases that the board was referring to this morning, like McNary, there are comity elements. And there – and there is a jurisprudence of this court with respect to federal and state relations which does depend on comity, and that is, of course, federally enforceable. I

don't believe that there is a concomitant enforceable doctrine –

QUESTION: But you're arguing –

MR. FARR: – state to state.

QUESTION: Even in the face – even in the face of some development by state – a state court that seems totally out of whack with our constitutional structure?

MR. FARR: Well, Justice O'Connor, I suppose I should –

QUESTION: Are there no extremes? Is there no limitation?

[43] MR. FARR Well, I – I mean, I'm – I suppose I should pause in the sense that – that if there is something that is so threatening to the constitutional structure and something for which there is no historical basis in – in terms of the – the way that sovereigns deal with each other. Now, see, that's – that's where I think this case is very different, because even though there was certainly a practical tradition that states were not to be sued in other states, as I say, since Schooner Exchange, and, indeed, in Verlinden in 1980, this Court has always taken the position that when you're talking about relationships between sovereigns, and they're coequal sovereigns, and the issue is immunity between them, that is a matter of comity.

* * *

[46] QUESTION: – do I understand – your comity argument basically is – it's kind a self-executing thing, because each time a state has to answer the comity question, it asks the question, what would I do if the

tables were reversed? And as history teaches us, they generally treat the other sovereign the way they would want to be treated themselves. And that's –

MR. FARR: Well –

QUESTION: – well, that's the rule that seems to have been developed without any overriding constitutional command order here.

MR. FARR: That's correct, Justice Stevens. And, in fact, they have become more specific in applying comity, I believe, in saying we want to treat the other sovereign as we do treat ourselves, not just as we want to be treated. We are treating the other sovereign the way we treat ourselves.

QUESTION: What if the – what if the case came, and they didn't do it? Justice Breyer's question, how do I fill in the blank? I – if, let's say, through this intrusive discovery process, systematically applied, they really were interfering with California's taxation, [47] couldn't California bring an original action to enjoin this interference?

MR. FARR: I certainly think that's possible. And, of course, as I've said, I mean, California can try to talk to Nevada and try to reach agreement at a sovereign level about this, or if, in fact – the Full Faith and Credit Clause has a specific express commitment to Congress of the right to declare the effects of other laws.

QUESTION: What would be the underlying –

QUESTION: Underlying –

QUESTION: – substantive law in Justice Souter's proposed original action?

MR. FARR: The – I suppose, I mean, based on what California has said before – said up to now, it would bring it under the Full Faith and Credit Clause, that it would say that there is some requirement –

QUESTION: Well, but we wouldn't need an original action for the Full Faith and Credit Clause. If that's so, it could apply in this case.

MR. FARR: That's correct. I mean, whether they're –

QUESTION: So what's the – what would an original action – there was – there's no underlying substantive standard to apply?

[48] MR. FARR: I mean, the question would be, is there – obviously, the question that's being raised. I am not aware of the federal substantive standard –

QUESTION: We haven't –

MR. FARR: – that says –

QUESTION: – in boundary cases, though, adopted, as a federal rule, something maybe different from the law of either state.

MR. FARR: That's correct. Now, you do have – there are certain cases, in fact, in which you can't have overlapping jurisdiction, where you can't own the same water, you can't own the same land, you can't escheat the same property. So that's true. The court has addressed those kinds of cases. In a situation where you're simply saying another state is applying its laws, I prefer that they apply our laws, and I'm troubled by the discovery that they have – they have allowed in applying their own laws, I'm not sure what the federal principle –

QUESTION: It's not simply that –

MR. FARR: – is that entitles you to stop it.

No. 02-42

In the
Supreme Court of the United States

FRANCHISE TAX BOARD OF
THE STATE OF CALIFORNIA,
Petitioner,

v.

GILBERT P. HYATT, ET AL.

On Writ of Certiorari to the Supreme Court of Nevada

BRIEF FOR RESPONDENT GILBERT P. HYATT

January 21, 2003

[19] These contacts, by themselves, give Nevada a constitutional basis for applying its own law to the torts committed against respondent there. But, in addition, Nevada has significant contacts with the defendant and with its particular acts of misconduct. Although the Board argues as if its actions were only peripherally connected to Nevada, *see* FTB Br. 33-34 n.16, the evidence demonstrates that the Board deliberately took actions that either occurred in Nevada or were specifically intended to have their harmful effects there. *See* pages 2-5 *supra*. Thus, the Board, through its officials, engaged in bad-faith conduct seeking to exact revenues from a particular taxpayer who, it knew, was living in Nevada at the time, repeatedly disclosing confidential information to third parties within and without Nevada. Furthermore, at least one Board official physically invaded respondent's privacy, going to his Nevada house and looking through his mail and trash. These purposeful acts not only supply a basis for exercising personal jurisdiction over the Board, *see Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985),[5] they strengthen Nevada's territorial interest in assuring redress and give rise to important police power concerns about deterrence of wrongful behavior. Whatever the Board may be free to do in California, it cannot take actions in Nevada, or directly affecting Nevada, without becoming subject to the laws of that

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[5] The Board initially sought to quash the complaint in this case for want of personal jurisdiction, but subsequently withdrew its motion. This case thus raises no question about the rules of personal jurisdiction as they might apply to State defendants.

State. *See generally* Story, *Commentaries on the Conflict of Laws*, §§ 18-19 (2d ed. 1841).[6]

[20] These cumulative interests are more than sufficient to satisfy governing full faith and credit standards. But, in holding that Nevada law should be applied to the intentional tort claims, the Nevada Supreme Court took an additional step: it tailored its analysis to account for the fact that the defendant was a sister State. Thus, to determine whether to defer to California law, the supreme court looked, not to whether Nevada law provides for compensation when the injury is caused by private parties, but whether it does so when the injury is caused by Nevada government officials. Finding that Nevada law barred suits based on the discretionary acts of its own officials, the court concluded that, as a matter of comity, Nevada should apply the comparable California law ostensibly providing immunity for negligent acts of California employees. See Pet. App. 11-12. However, because Nevada law did not give absolute immunity to its own officials for intentional torts, the Court went on to conclude that "affording Franchise Tax Board statutory immunity for intentional torts does contravene Nevada's policies and interests in this case." Pet. App. 12. More particularly, it decided that "greater weight is to be accorded Nevada's interest in protecting its citizens

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[6] The Board does not, and could not, claim any expectation that Nevada would recognize complete immunity for its actions. More than a decade before, Nevada had made clear that it would allow compensation for individuals injured by certain acts of sister States, relying in part on the decision in *Nevada v. Hall*. *See Mianecki v. District Court*, 658 P.2d 422, 423-25, *cert. dismissed*, 464 U.S. 806 (1983).

from injurious intentional torts and bad faith acts committed by sister states' government employees, than California's policy favoring complete immunity for its taxation agency." Pet. App. 12-13.

The Nevada Supreme Court, by engaging in this comparative analysis, thus gave full regard for the fact that California is a sovereign State. In applying full faith and credit principles, its reference point was not the liability of private individuals for tortious conduct, but the liability *of the State itself*. In *Nevada v. Hall*, where the respective position of the two States was reversed, this Court noted with apparent approval that California (the forum State) had looked to its own immunity for similar torts in deciding whether to accord immunity to Nevada (the defendant State) under Nevada law. *See* 440 U.S. at 424. The Full Faith and Credit Clause requires no more.

DISTRICT COURT
CLARK COUNTY, NEVADA

No. A382999

GILBERT P. HYATT,

Plaintiff,

v.

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,

Defendant.

Filed: September 8, 2010

JUDGMENT

(filed under seal by order of the Discovery Commissioner dated February 22, 1999)

This matter came on for trial before the Court and a jury, beginning on April 14, 2008, and concluding with the verdicts of the jury on August 6, 2008 (liability for and amount of compensatory damages), on August 12, 2008 (liability for punitive damages), and on August 14, 2008 (amount of punitive damages), the Honorable Jessie Walsh, District Judge, presiding. Plaintiff Gilbert P. Hyatt appeared with his counsel Mark A. Hutchison, Esq. of Hutchison & Steffen, LLC, Peter C. Bernhard, Esq. of Bullivant Houser Bailey, PC, and Donald J. Kula Esq. of Perkins Cole. Defendant Franchise Tax Board of the State of California appeared with its representative and its counsel, Pat Lundvall Esq., and James Bradshaw Esq., of McDonald Carano Wilson, LLP.

Testimony was taken under oath, and evidence was offered, introduced and admitted. Counsel argued the merits of their clients' cases, the issues have been duly tired, and the jury duly rendered its verdict. The jury rendered a verdict in favor of Plaintiff Gilbert P. Hyatt and against Franchise Tax Board on all causes of action presented to the jury, including Plaintiff's second cause of action for invasion of privacy intrusion upon seclusion, third cause of action for invasion of privacy publicity of private facts, fourth cause of action for invasion of privacy false light, fifth cause of action for intentional infliction of emotional distress, sixth cause of action for abuse of process, seventh cause of action for fraud and eighth cause of action for breach of confidential relationship. This Court previously dismissed Plaintiff's first cause of action for declaratory relief, and that cause of action was not presented to the jury.

The jury returned its verdict awarding Plaintiff Gilbert P. Hyatt compensatory damages of EIGHTY-FIVE MILLION DOLLARS AND NO CENTS ($85,000,000.00) for emotional distress; compensatory damages of FIFTY-TWO MILLION DOLLARS AND NO CENTS ($52,000,000.00) for invasion of privacy; attorneys' fees as special damages of ONE MILLION, EIGHTY-FIVE THOUSAND, TWO HUDRED EIGHT-ONE DOLLARS AND 56 CENTS ($1,085,281.56); and punitive damages of TWO HUNDRED FIFTY MULLION DOLLARS AND NO CENTS ($250,000,000.00).

At the conclusion of the verdict reached on August 6, 2008, the jury was polled, and each juror responded that the verdict as read by the Clerk of the

Court was the verdict of that juror, resulting in a verdict of eight (8) in favor and zero (0) opposed, as to liability and the amount of compensatory damages awarded on each of Plaintiff's seven claims. At the conclusion of the verdict on punitive damages on August 12, 2008, the jury was polled, and each juror responded that the verdict as read by the Clerk of the Court was the verdict that juror, resulting in a verdict of eight (8) in favor and zero (0) opposed, as to whether the conduct of the Defendant warranted punitive damages. At the conclusion of the verdict on punitive damages on August 14, 2008, the jury was polled, and seven jurors responded that the verdict as read by the Clerk of the Court was the verdict of juror, with one juror responding in the negative, resulting in a verdict seven (7) in favor and one (1) opposed, as to the amount of punitive damages awarded against Defendant.

NOW, THEREFORE, based on the foregoing, judgment upon the jury verdicts is entered in favor of Plaintiff Gilbert P. Hyatt and against Defendant Franchise Tax Board, as follows:

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff Gilbert P. Hyatt is awarded compensatory damages in the amount of EIGHTY-FIVE MILLION DOLLARS AND NO CENTS ($85,000,000.00) for emotional distress, plus prejudgment interest at the rate of seven percent per annum (7%) (the applicable prejudgment statutory rate) in the amount of $63,184,110.12 from the date the Complaint was served (calculated through August 27, 2008, and accruing from August 27, 2008 at the rate of $16,301.37 per day until the date of this

Judgment), with interest continuing to accrue at the applicable postjudgment statutory rate from the date of this Judgment until satisfied in full;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff Gilbert P. Hyatt is awarded compensatory damages in the amount of FIFTY TWO MILLION DOLLARS AND NO CENTS ($52,000,000.00) for invasion of privacy, plus prejudgment interest at the rate of seven percent per annum (7%) (the applicable prejudgment statutory rate) in the amount of $38,653,797.60 from the date the Complaint was served (calculated through August 27, 2008, and accruing from August 27, 2008 at the rate of $9,972.60 per day until the date of this Judgment), with interest continuing to accrue at the applicable postjudgment statutory rate from the date of this Judgment until satisfied in full;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff Gilbert P. Hyatt is awarded attorneys' fees as special damages in the amount of ONE MILLION, EIGHTY-FIVE THOUSAND, TWO HUNDRED EIGHTY-ONE DOLLARS AND 56 CENTS ($1,085,281.56), plus prejudgment interest at the rate of seven percent per annum (7%) (the applicable prejudgment statutory rate) in the amount of $497,824.53 from the dates the special damages were incurred (calculated through August 27, 2008, and accruing from August 27, 2008 at the rate of $208.14 per day until the date of this Judgment), with interest continuing to accrue at the applicable postjudgment statutory rate from the date of this Judgment until satisfied in full; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff Gilbert P. Hyatt is awarded punitive damages in the amount of TWO HUNDRED FIFTY MILLION DOLLARS AND NO/100 CENTS ($250,000,000.00), with interest to accrue at the applicable postjudgment statutory rate from the date of this Judgment until satisfied in full.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff Gilbert P. Hyatt is awarded costs in the amount of to be determined with interest to accrue at the applicable postjudgment statutory rate from the date of this Judgment until satisfied in full.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff Gilbert P. Hyatt is awarded costs in the amount of to be determined [handwritten] with interest to accrue at the applicable postjudgment statutory rate from the date of this Judgment until satisfied in full.

Dated this 5 day of ~~August~~ Sept [handwritten], 2008.

JESSIE WALSH
District Judge

JA 201

IN THE SUPREME COURT
OF THE STATE OF NEVADA

No. 53264

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,

Appellant,

v.

GILBERT P. HYATT,

Respondent.

APPEAL FROM JUDGMENT –
EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA,
CLARK COUNTY
HONORABLE JESSIE WALSH, DISTRICT JUDGE

Filed: August 7, 2009

APPELLANT'S OPENING BRIEF

[100] Here, the district court excluded FTB's effort to explain extensive efforts by FTB to preserve and produce all Hyatt-related EMC emails, and to explain the circumstances involving the backup tapes. 50 AA 12399 (134) - 12403 (150). The effect of this ruling was to transmute the adverse inference into a mandatory presumption. This was error. The district court's error was compounded during closing arguments, when FTB's counsel was attempting to explain the circumstances, using **stipulated and admitted** exhibits offered by Hyatt at trial. 53 AA 13131 (97) - 33 (105). The district court forbade FTB's counsel from even using these admitted exhibits to argue that the jury should not draw the adverse inference. *Id.*

G. The Compensatory Damage Awards Were Improper

1. At Minimum, All Compensatory Damages Should Have Been Capped

The district court denied FTB's request to apply comity and to limit compensatory damages to $75,000 per claim, which would be the limit for a Nevada government entity. 92 AA 22965; NRS 41.035(1). Instead, the district court allowed the entire $138 million compensatory damages verdict to remain. This was error. As explained in Section IV(B), above, this court and the United States Supreme Court previously determined that comity **must** be applied to California's complete sovereign immunity statute for FTB, to the extent that such immunity aligns with immunity [101] extended to Nevada government entities. The district court should have "sensitively applied principles of comity with a healthy regard for California's sovereign status, relying on the contours

of Nevada's own sovereign immunity from suit as a benchmark for its analysis." *Franchise Tax Board*, 538 U.S. at 499 (emphasis added). The district court should have also avoided hostility to California's public acts.[80]

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[80] The district court's actions in this context violated FTB's constitutional rights. A state cannot adopt a "policy of hostility" to the public acts of another state. *See Franchise Tax Board*, 538 U.S. at 499, citing *Carroll v. Lanza*, 349 U.S. 408, 413 (1955). In 2003 the United States Supreme Court found no violation of the Full Faith and Credit Clause here, but only because this court's April 2002 order did not exhibit hostility to California, and because this court had given "healthy regard" for California's sovereign status, "relying on the contours of Nevada's own sovereign immunity for suit as a benchmark for its analysis" of FTB's immunity. *Franchise Tax Board*, 538 U.S. at 499. The district court's refusal to apply Nevada's statutory cap was an act of all-out hostility to California, ignoring the benchmark of Nevada's own sovereign immunity, imposing liability far beyond that which would be imposed against a Nevada government agency, and thereby ignoring California's status as a sovereign state. This violated the Full Faith and Credit Clause. Additionally, it is questionable whether there is still validity to the United States Supreme Court's holding in *Nevada v. Hall*, 440 U.S. 410 (1979), which allowed one state to be sued in another state's courts. Revisiting *Hall* was not before the United States Supreme Court in *Franchise Tax Board*, 538 U.S. at 497. But Hall's continuing viability is questionable, in light of more recent decisions; and FTB contends that Hall would most likely be overruled. *See Fed. Mar. Comm'n v. S. Carolina State Ports Auth.*, 535 U.S. 743 (2002); *Alden v. Maine*, 527 U.S. 706 (1999); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996). This court may evaluate the continuing viability of an old United States Supreme Court opinion, in light of more recent changes in the economy or the law. E.g. *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) (state court ruled that 25-year-old Supreme Court decision was no longer good law; although Supreme Court reversed on merits, Court did not hold that state court lacked

The analysis in this court's April 2002 order was essentially as follows: (1) comity requires California's immunity statute for FTB to be applied, to the extent that such immunity does not contravene Nevada policies; (2) California's statute provides complete immunity for all of FTB's acts, discretionary or otherwise, but Nevada's statute only provides immunity for discretionary acts; (3) California's immunity statute must be applied, to the same extent that a Nevada entity would receive immunity, and as such, Hyatt's claims based on discretionary acts are dismissed; and (4) FTB is treated no worse than a similarly situated Nevada government entity, and Hyatt is treated no better than if he sued a Nevada government entity.

The very same analysis must apply to the damages cap issue: (1) comity requires [102] California's immunity statute for FTB to be applied, to the extent that such immunity does not contravene Nevada policies; (2) California's Statute provides complete immunity, i.e., zero damages, but Nevada's statute allows damages against a government entity up to $75,000; (3) California's immunity statute must be applied, to the same extent that a Nevada entity would receive immunity, and as such, Hyatt's damages are capped at $75,000; and (4) FTB is treated no worse than a similarly situated Nevada entity, and Hyatt is treated no better than if he sued a Nevada government entity

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authority to question continued validity of U.S. Supreme Court case).

Accordingly, if the court allows any of his claims to stand, the compensatory damages portion of the judgment must be reversed and remanded for entry of a new judgment using the $75,000 cap.

IN THE SUPREME COURT
OF THE STATE OF NEVADA

No. 53264

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,

Appellant,

v.

GILBERT P. HYATT,

Respondent.

APPEAL FROM JUDGMENT –
EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY
HONORABLE JESSIE WALSH, DISTRICT JUDGE

APPELLANT'S APPENDIX
VOLUME 68

GILBERT P. HYATT

SS# XXX-XX-XXXX

[DISPLAYED IN ORIGINAL; REDACTED FOR JOINT APPENDIX]

FTB RESIDENCY AUDIT 1991

w/p

3/33.1 7/25/94 RESPONSE FROM LA PALMA CITY WATER SERVICES

- Grace Jeng turned on water service 11/26/91
- Mailing address P.O. Box 3357 Cerritos
- Owner listed as Gilbert P. Hyatt

CALIFORNIA TIE – 11/91

- Won't give out mailing address, Ph. # (XXX-XXX-XXXX [displayed in original; redacted for joint appendix])
- Turn off date for Gilbert Hyatt account is 11/26/91

CALIFORNIA TIE – 11/91

3/41 8/10/94 LETTER TO ORANGE COUNTY RECORDER

3/50 8/11/93 COPY OF LETTER FROM CITY OF LA PALMA TO GILBERT HYATT FOR BUSINESS LICENSE FOR DIGITAL NUTRONICS

3/42	8/31/94	RESPONSE FROM ORANGE COUNTY RECORDER Copy of Grant Deed for La Palma house dated 10/1/91
3/43	11/10/94	COPY OF GRANT DEED FOR LAS VEGAS HOUSE Granted to Michael Kern as trustee for Kern Trust dated 3/24/92
3/44	11/4/94	LETTER FROM CLARK COUNTY RECORDER No record of trust in county records.
3/45	12/1/94	LETTER TO PRISCILLA MAYSTEAD (EX-WIFE)
3/46	12/5/94	LETTER TO REPRESENTATIVE MIKE KERN (IDR #7)

12/6/94 Interviewed the taxpayer's exwife Priscilla Maystead at her residence. Affidavit was obtained. See w/p A1 [handwritten].

12/12/94 Mrs. Maystead called and gave me the telephone numbers for other relatives who would like to speak to me:

(Mrs. Maystead – Exwife) (XXX)XXX-XXXX

(Mike Hyatt – Brother) (XXX)XXX-XXXX

(Yvette Covery – Sister) (XXX)XXX-XXXX

(Beth Hyatt – Daughter) (XXX)XXX-XXXX

[All phone numbers displayed in original; redacted for joint appendix]

12/16/95

Yvette Covery, the taxpayer's sister called. She said that she does not see her brother anymore since the lawsuit over their mother's estate. She may be able to send some documentation regarding the lawsuit. She stated that she would call back.

12/19/4

I interviewed the taxpayer's brother Michael Hyatt at his residence. Affidavit was obtained. See w/p A2 [handwritten].

1/5/95

Mike Kern (rep from Las Vegas) called. See memo of telephone conversation at K/1 [handwritten]. The taxpayer's representative Mike Kern called from Las Vegas to tell me that he wouldn't be meeting the deadline of 1/6/95 which had been set for the document request sent to his office. He said that he had been skiing with the taxpayer at Mount Charleston over the weekend and had discussed the issue with him. He explained to me that he is good friends with the taxpayer and that they often spend time together, and include their children sometimes.

Mike felt that the document request is unreasonable, as it would cost the taxpayer too much

in professional fees to copy all of the checks. He wanted to know if we would be willing to bear the cost, or if I would be willing to come to Las Vegas to do the photocopying myself. I told him that I would check on the policy of the department and get back to him about this.

Mike said that he felt that he had provided enough documentation to prove that Mr. Hyatt was a Nevada resident. Mike said that Mr. Hyatt is in Nevada now: he owns a house in Nevada and no longer owns any property in California. According to Mike, Mr. Hyatt's cars are registered in Nevada. Mike said that Mr. Hyatt moved himself to Nevada in a trailer that Mr. Hyatt owns. After moving to Nevada, he changed the registration on this trailer to Nevada. Mike does not understand why we don't accept this.

Mike explained that he and Mr. Hyatt had been involved in the political campaign for the Nevada Governor Miller. They also were supporting the Nevada senator and other judges. He said that Mr. Hyatt had been involved in the GATT legislation. He said that he would provide a letter from the governor of Nevada stating that Mr. Hyatt was a Nevada resident, and that this should be sufficient documentation.

I explained to Mike that I was not questioning whether or not Mr. Hyatt was in Nevada, that I was just trying to determine the date that he left California. I explained that the copies of the checks were required by our legal department. This documentation is analyzed to determine a pattern of the taxpayer's spending habits and to determine when

the taxpayer severed ties with California and established ties in the state of Nevada.

continued...

JA 212

IN THE SUPREME COURT
OF THE STATE OF NEVADA

No. 53264

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,

Appellant,

v.

GILBERT P. HYATT,

Respondent.

APPEAL FROM JUDGMENT –
EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY
HONORABLE JESSIE WALSH, DISTRICT JUDGE

RESPONDENT'S APPENDIX
VOLUME 83

STATE OF CALIFORNIA
FRANCHISE TAX BOARD

AFFIDAVIT

State of California, Chatsworth
County of Los Angeles

I, Pricilla Louise Maystead state that:

I reside at XXXXX [displayed in original; redacted for joint appendix] Chatsworth.

I certify that on December 6, 1994 I was interviewed by Sheila Cox and Barry Gilbert, representatives of the State of California, Franchise Tax Board.

During the interview I indicated the following:

Question: Do you know Gilbert P. Hyatt and how long have you known him?

Answer: I have known him since 1958.

Question: What is your current relationship with Gilbert P. Hyatt?

Answer: I am his ex-wife. We were married for seventeen years.

Question: To the best of your knowledge, where does Mr. Hyatt reside and how long has he resided there?

Answer: Supposedly he bought a house in Vegas. I was in Vegas a year ago April (April 93) with my daughter, the house was overgrown with weeds. ~~At that time he was in house in La Palma~~ ["PM" written in margins]. A friend served papers at the house in La Palma in December of 1992 and saw him there.

In the deposition he claimed that he had sold the La Palma house. We checked the records, but found no record of the ale.

I do not know the exact date that he supposedly moved to Las Vegas, but I think that it was after he got the money.

Question: How often and upon what occasions have you seen Mr. Hyatt since 1991?

Answer: He and I don't talk. I have never seen the La Palma house. I have seen him in depositions in March of 1993 in Las Vegas. In the depositions, he has stated that he is a resident of Las Vegas. There was a subsequent deposition in Los Angeles in March or April of 1993. The court case was in June 1993.

Question: Have you been to Mr. Hyatt's home since 1991 and if so, upon what dates and occasions? If yes, did you observe Mr, Hyatt at his home?

Answer: (not applicable)

Question: To the best of your knowledge, does anyone reside with Mr. Hyatt? If so, who is (are) the individual(s)? Have you observed this (these) individual(s) at the residence?

Answer: There is a woman named Grace, a Chinese woman. She is an employee or something. I have met her on numerous occasions at family events. She is very nice.

Question: Were any vehicles kept at the property? If so, what kind and who used them?

Answer: He drives a Lexus. He also bought a light blue Toyota Celica. He got the Toyota in 1990 or 1991.

He got the Lexus within the last ~~few~~ ["two" and "PM" written in margins] years ago.

Question: Does Mr. Hyatt have children? If so, what are their ages and residence?

Answer: My son Danny lives in Long Beach. He has one son. He is 31 years old.

My daughter lives in West Los Angeles. She is 28 years old. She has no children.

My oldest son is deceased. He has two children that live in Anaheim Hills.

Question: Does Mr. Hyatt visit his children on a regular basis to the best of your knowledge? If so, how often and where do they visit each other?

Answer: My daughter and he had a falling out over the case. She would go to Las Vegas to see him or meet him here. She would meet him at his place or at restaurant. They have not seen each other since before June of 1993. He sees my son often. They are rather close. I do not know where and how often they visit each other. The grandchildren go to Las Vegas to see him. The grandchildren visit him here.

Question: Were you aware of Mr. Hyatt's involvement in social or community activities? If so, what types of activities?

Answer: He was never involved in any community activities. He and I belonged to Temples at my urging. I am not aware of any temples that he belongs to now.

Question: What is your knowledge about Mr. Hyatt's business activities during the period from 1990 to the present?

Answer: I know primarily what I have read in the papers. He is getting a lot of royalties. Phillips was the first U.S. corporation to pay royalties. There are Japanese companies paying him royalties. He is getting a lot of royalties from Intel.

He had a corporation Digital Nutronics. He wrote the child support checks on this account. He wanted his children to give their paychecks to him and then he would pay them through the corporation. ["THE CHILDREN TOLD ME THIS. P.M." handwritten in margins.]

He was paying child support from 1977 through 1984. He also paid $300 per month rent for his daughter while she was a student at UCLA until 1990.

Mr. Hyatt was into sailing and flying during the years that we were married. He took flying lessons. He liked to dance also.

Mr. Hyatt was represented by Mayor Richard Riordan's firm in the lawsuit. Greg Roth was the other attorney. The other attorney was Lesley Andrus. All of the attorneys were located in California.

He told my daughter that he had colon surgery during 1991 or 1992. She was visited him in the hospital around 1990 or 1991. She would know which hospital he had been in.

I have heard that Mr. Hyatt helped my son to prepare false tax returns. My son died in 1990. That would have been in 1987, 1988, and 1989. My son had not been preparing tax returns. I told him to go to an accountant.

Mr. Hyatt had (and still has) a P.O. Box in California for correspondence. That is the address that we have used to correspond with him.

Mr. Hyatt is still fighting with his brothers and sisters over the settlement of his mother's estate. The estate is in Orange County. There was a lawsuit relating to the estate. Her name is Anna Haber Hyatt.

Most of Mr. Hyatt's money had gone into fighting the patents. He is kind of eccentric and he never spent much money on clothes or anything. He did consulting work to get money while fighting the patent.

Mr. Hyatt got his electrical engineering degree from Berkeley and his Masters degree from USC. He got the master's degree while we were married.

Mr. Hyatt may be a republican contributor to Mayor Riordan and Pete Wilson. He has ties with the president of USC.

I have read the foregoing consisting of 5 page(s). I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each.

I made this statement freely and voluntarily, without any threats or rewards, or promises of reward having been made to me in return for it.

s/Priscilla Louise Maystead
(Signature of Affiant)

12/6/94
(Date)

_____
(Telephone number of Affiant)

Subscribed and sworn to
before me this 6th day of
December, 1994 at
Chatsworth, CA.

s/Sheila Cox	s/Barry Gilbert
(Signature)	(Signature of Witness)
Tax Auditor	12/6/94
(Title)	(Date)

STATE OF CALIFORNIA
FRANCHISE TAX BOARD

AFFIDAVIT

State of California, Escondido
County of San Diego

I, Michael A. (Brian) Hyatt state that:

I reside at XXXXX [displayed in original; redacted for joint appendix] Escondido.

I certify that on December 19, 1994 I was interviewed by Sheila Cox and Jahna Alvarado, representatives of the State of California, Franchise Tax Board.

During the interview I indicated the following:

Question: Do you know Gilbert P. Hyatt and how long have you known him?

Answer: I have known him since I was born. He is my older brother.

Question: What is your current relationship to Gilbert P. Hyatt?

Answer: We are estranged.

Question: To the best of your knowledge, where does Gilbert Hyatt reside and how long has he resided there?

Answer: To the best of my knowledge, he has two residences. He has a house on Jennifer Lane in La Palma. He also has a house in Las Vegas, according to what I have been told and seen on television. The program was Inside Edition. He did use a post office

box in Cerritos for his mail. I can't state for a fact whether he still uses this post office box or not. He moved from a home in La Palma about 1983 when he purchased the home on Jennifer Lane. I stopped contact with him ~~at~~ ["about, BH" handwritten in margins] the end 1990.

Question: How often and upon what occasions have you seen Gilbert Hyatt since 1991?

Answer: I saw him in court on a couple of occasions. The court was in Santa Ana California. My attorney went to Las Vegas to his home during 1991 and 1992 and deposed him there.

Question: Have you been to Gilbert Hyatt's home since 1991 and if so, upon what dates and occasions? If yes, did you observe Mr. Hyatt at his home?

Answer: I have not been to his home since 1991.

Question: To the best of your knowledge, does anyone reside with Gilbert Hyatt? If so, who is (are) the individual(s)? Have you observed this (these) individual(s) at the residence?

Answer: Yes, one that I know for certain is Grace the Chinese girl. She is his assistant. She takes care of his home, cooks, etc. I don't know her last name. I heard that she stays here. I don't know if she stays in the house or keeps it. I have met Grace before.

Question: Were any vehicles kept at the property? If so, what kind and who used them?

Answer: During the time period 1990 approximately, Gil had a Toyota subcompact and Grace had something similar.

Question: Does Gilbert Hyatt visit his children and grandchildren on a regular basis to the best of your knowledge? If so, how often and where do they visit each other?

Answer: I have heard that he has had them visiting them in Las Vegas. I do not have any personal knowledge of their visits.

I have heard secondhand that two of my children attended a Seder at Gilbert's residence in Las Vegas last year (September 1993). His son Danny and his girlfriend were also there.

Question: Were you aware of Gilbert Hyatt's involvement in social or community activities? If so, what types of activities?

Answer: He was in Parents without Partners in 1981. He got me into Great Expectations also. He was a member in 1988 approximately. This was in the Irvine and Los Angeles chapters for lifetime members. He may be inactive or he may have sold his membership. We also used to attend dances, etc. He used to be a dance instructor.

Question: What is your knowledge about Gilbert Hyatt's business activities during the period from 1990 to the present?

Answer: He always wanted to pay my expenses with checks. He wanted me to give him receipts from restaurants. etc. He wanted receipts for anything. He would pay with a check with a stamp which said "private contractor." He would use these receipts for business expense writeoffs, so he wouldn't have to pay income taxes. He did that with many people. He also did this with his former girlfriend Helene (Lenny).

At his residence in La Palma, he always had lights on, televisions on, etc. He told me that he had an illegal hookup to get electricity for free, in addition to his regular service.

My brother had a philosophy to cheat the U.S. Government. File for a patent, keep it pending, wait a long time, then file an addendum. The technology will catch up during time, and then you may claim credit for the invention, even though you had never made a working model. You are filing the idea, and you keep it alive by adding to it. At such a time that it becomes feasible, he will allow the patent to be issued.

He met with Phillips Corporation in Holland. They are paying him royalties to go after the other companies involved with the patent [",I believe. BH" written in margins].

During 1982-1983, I was helping him toward the potential of developing the idea of a liquid crystal television with a laser. My idea was holographic projection television. He was supposed to help me with the patent. He used this idea and gave it away. I sued him on that and he got sanctions against me. It was not patented, so there was no patent fraud. I could have sued him for business fraud. There were two other lawsuits. There was a lawsuit involving my mother's estate.

My collection of antiques were stored in his home in La Palma. He had a secret storage area behind the steps in the basement where he hid documents and things. He had had this assembled. He had this built in 1983. I had to sue him to get my things back. I got my items back in late 1990. Since that date, I have only seen him in court.

Question: Do you have any knowledge about doctors which Gilbert Hyatt has seen in the past and any medical history of Gilbert Hyatt?

Answer: I have heard that he had colon cancer and that he had had surgery. Where and when I don't know. I know that he quit drinking.

I have read the foregoing consisting of 4 page(s). I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each.

I made this statement freely and voluntarily, without any threats or rewards, or promises of reward having been made to me in return for it.

s/Michael A. (Brian) Hyatt
(Signature of Affiant)

12/19/94
(Date)

_____
(Telephone number of Affiant)

Subscribed and sworn to
before me this 19th day
of December, 1994 at
Escondido, CA.

s/Sheila Cox
(Signature)

Tax Auditor
(Title)

s/Jahna Alvarado
(Signature of Witness)

12/19/94
(Date)

1/24/95

Licensing Executives Society
41 East Avenue
Norwalk, Connecticut 06891

Gentlemen:

For the purpose of administering the Personal Income Tax Law of the State of California, we would appreciate your cooperation in providing the documents specified in our form FTB 4973-39 here enclosed.

For your convenience we have enclosed self addressed, postage paid envelopes.

Thank you very much for your cooperation.

Sheila Cox
Tax Auditor

The People of the State of California to:

Licensing Executives Society
71 East Avenue
Norwalk, Connecticut 06851

In the Matter of:	Social Security No.: XXX-XX-XXXX [displayed in original; redacted for joint appendix] or Corporation No:
Gilbert P. Hyatt	For the years:

This demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge. The information will be used by this department for investigation, audit, or collection purposes pertaining to the above-named taxpayer for the years indicated.

1. Copy of original application for society

2. Copy of any address changes submitted and dates submitted.

3. Records of attendance at meetings or functions for the Society.

FRANCHISE TAX BOARD

By: S. Cox
Authorized Representative

Dated: January 24, 1995

Telephone: (XXX) XXX-XXXX [displayed in original; redacted for joint appendix]

1/24/95

Association of Computing Machinery
P.O. Box 12115 Church Street Station
New York, New York, 10249

Gentlemen:

For the purpose of administering the Personal Income Tax Law of the State of California, we would appreciate your cooperation in providing the documents specified in our form FTB 4973-39 here enclosed.

For your convenience we have enclosed self addressed, postage paid envelopes.

Thank you very much for your cooperation.

Sheila Cox
Tax Auditor

The People of the State of California to:

Association of Computing Machinery
P.O. Box 12115 Church Street Station
New York, New York 10249

In the Matter of:	Social Security No.: XXX-XX-XXXX [displayed in original; redacted for joint appendix]
Gilbert P. Hyatt	or Corporation No:
	For the years:

This demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge. The information will be used by this department for investigation, audit, or collection purposes pertaining to the above-named taxpayer for the years indicated.

1. Copy of original application for the Association.

2. Copy of any address changes submitted and date submitted.

3. Records of attendance at meetings or functions for the Association.

FRANCHISE TAX BOARD

By: S. Cox
Authorized Representative

Dated: January 24, 1995

Telephone: (XXX) XXX-XXXX [displayed in original; redacted for joint appendix]

1/24/95

Nevada Development Authority
3900 Paradise Suite 155
Las Vegas, Nevada 89109

Gentlemen:

For the purpose of administering the Personal Income Tax Law of the State of California, we would appreciate your cooperation in providing the documents specified in our form FTB 4973-39 here enclosed.

For your convenience we have enclosed self addressed, postage paid envelopes.

Thank you very much for your cooperation.

Sheila Cox
Tax Auditor

The People of the State of California to:

Nevada Development Authority
3900 Paradise Suite 155
Las Vegas, Nevada 39109

In the Matter of:	Social Security No.: XXX-XX-XXXX [displayed in original; redacted for joint appendix] or Corporation No:
Gilbert P. Hyatt	
	For the years:

This demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge. The information will be used by this department for investigation, audit, or collection purposes pertaining to the above-named taxpayer for the years indicated.

1. Copy of application for membership in NDA.

2. Copy of any address changes submitted and dates submitted.

3. Records of attendance at any meetings or functions for the Society

FRANCHISE TAX BOARD

By: S. Cox
Authorized Representative

Dated: January 24, 1995

Telephone: (XXX) XXX-XXXX [displayed in original; redacted for joint appendix]

The People of the State of California to:

Nevada Development Authority
3900 Paradise Suite 155
Las Vegas, Nevada 39109

In the Matter of:	Social Security No.: XXX-XX-XXXX [displayed in original; redacted for joint appendix] or Corporation No:
Gilbert P. Hyatt	For the years:

This demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge. The information will be used by this department for investigation, audit, or collection purposes pertaining to the above-named taxpayer for the years indicated.

1. Copy of original application for membership in NDA.

2. Copy of any address changes submitted and date submitted.

3. Records of attendance at any meetings or functions.

We can not find any listings for: Digital Nutronics or Gilbert Hyatt.

[illegible signature] [handwritten in margins]

FRANCHISE TAX BOARD

By: S. Cox

Authorized Representative

Dated: January 24, 1995

Telephone: (XXX) XXX-XXXX [displayed in original; redacted for joint appendix]

1/24/95

Great Expectations
18818 Teller Ave. Suite 110
Irvine, CA 92715

Gentlemen:

For the purpose of administering the Personal Income Tax Law of the State of California, we would appreciate your cooperation in providing the documents specified in our form FTB 4973-39 here enclosed.

For your convenience we have enclosed self addressed postage paid envelopes.

Thank you very much for your cooperation.

Sheila Cox
Tax Auditor

The People of the State of California to:

Great Expectations
18818 Teller Ave. Suite 110
Irvine, CA 92715

In the matter of:	Social Security No. or
Gilbert P. Hyatt	Corporation No: XXX-XX-XXXX [displayed in original; redacted for joint appendix]
	For the years:

This demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge. The information will be used by this department for investigation, audit, or collection purposes pertaining to the above-named taxpayer for the years indicated.

1. Copy of original application for membership and type of membership.

2. Copy of any address changes submitted and dates submitted.

3. Current status of membership.

4. Records of contact with the Great Expectations office.

5. Records of attendance at any functions.

FRANCHISE TAX BOARD

By: S. Cox

Authorized Representative

Dated: January 24, 1995

Telephone: (XXX) XXX-XXXX [displayed in original; redacted for joint appendix]

1/24/95

Great Expectations
11640 South Sepulveda Suite 100
Los Angeles, CA 90025

Gentlemen:

For the purpose of administering the Personal Income Tax Law of the State of California, we would appreciate your cooperation in providing the documents specified in our form FTB 4973-39 here enclosed.

For your convenience we have enclosed self addressed, postage paid envelopes.

Thank you very much for your cooperation.

Sheila Cox
Tax Auditor

The People of the State of California to:

Great Expectations
11640 South Sepulveda Suite 100
Los Angeles, CA 90025

In the matter of:	Social Security No. or Corporation No: XXX-XX-XXXX [displayed in original; redacted for joint appendix]
Gilbert P. Hyatt	
	For the years:

This demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge. The information will be used by this department for investigation, audit, or collection purposes pertaining to the above-named taxpayer for the years indicated.

1. Copy of original application for membership and type of membership.

2. Copy of any address changes submitted and dates submitted.

3. Current status of membership.

4. Records of contact with the Great Expectations office.

5. Records of attendance at any functions.

FRANCHISE TAX BOARD

By: S. Cox

Authorized Representative

Dated: January 24, 1995

Telephone: (XXX) XXX-XXXX [displayed in original; redacted for joint appendix]

1/26/95

Temple Beth Am
4180 Pecos Road
Las Vegas, Nevada

Gentlemen:

For the purpose of administering the Personal Income Tax Law of the State of California, we would appreciate your cooperation in providing the documents specified in our form FTB 4973-39 here enclosed.

For your convenience we have enclosed self addressed, postage paid envelopes.

Thank you very much for your cooperation.

Sheila Cox
Tax Auditor

The People of the State of California to:

Temple Beth Am
4180 Pecos Road
Las Vegas, Nevada

In the Matter of:	Social Security No.: XXX-XX-XXXX [displayed in original; redacted for joint appendix] or Corporation No:
Gilbert P. Hyatt	
	For the years:

This Demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge. The information will be used by this department for investigation, audit, or collection purposes pertaining to the above-named taxpayer for the years indicated.

1. Copy of original application for society.

2. Copy of any address changes submitted and dates submitted.

3. Records of attendance at meetings or functions for the Society.

FRANCHISE TAX BOARD

By: S. Cox
Authorized Representative

Dated: January 26, 1995

Telephone: (XXX) XXX-XXXX [displayed in original; redacted for joint appendix]

2/17/95

Temple Beth Am
9001 Hill Point
Las Vegas, Nevada 89134

Gentlemen:

For the purpose of administering the Personal Income Tax Law of the State of California, we would appreciate your cooperation in providing the documents specified in our form FTB 4973-39 here enclosed.

For your convenience we have enclosed self addressed, postage paid envelopes.

Thank you very much for your cooperation.

Sheila Cox
Tax Auditor

The People of the State of California to:

Temple Beth Am
9001 Hill Point
Las Vegas, Nevada 89134

In the Matter of:	Social Security No.: XXX-XX-XXXX [displayed in original; redacted for joint appendix]
Gilbert P. Hyatt	or Corporation No:
	For the years:

This demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge. The information will be used by this department for investigation, audit, or collection purposes pertaining to the above-named taxpayer for the years indicated.

1. Copy of original application for membership and type of membership.

2. Copy of any address changes submitted and date submitted.

3. Records of attendance at any services, meetings, or functions for the Society.

FRANCHISE TAX BOARD

By: S. Cox
Authorized Representative

Dated: 2/17/95

Telephone: (XXX) XXX-XXXX [displayed in original; redacted for joint appendix]

February 28, 1995

Ms. Sheila Cox
Tax Auditor
Franchise Tax Board
333 N. Glenoaks Boulevard
Suite 200
Burbank, California 91502-1170

Re: Gilbert P. Hyatt – 1991 Taxable Year

Dear Ms. Cox:

Per your request, enclosed are copies of the taxpayer's bank account statements and cancelled checks for the Nevada bank accounts he maintained in 1991 and 1992. As previously discussed with you and other Franchise Tax Board auditors, all correspondence and materials furnished to the Franchise Tax Board by the taxpayer are highly confidential. It is our understanding that you will retain these materials in locked facilities with limited access.

We appreciate your understanding and cooperation.

Sincerely,

s/Eugene G. Cowan
Eugene G. Cowan
of RIORDAN & McKINZIE

3/23/95

Congregation Ner Tamid
2761 Emerson Avenue
Las Vegas, Nevada 89121

Gentlemen:

For the purpose of administering the Personal Income Tax Law of the State of California, we would appreciate your cooperation in providing the documents specified in our form FTB 4973-39 here enclosed.

For your convenience we have enclosed self addressed, postage paid envelopes.

Thank you very much for your cooperation.

s/Sheila Cox
Sheila Cox
Tax Auditor

The People of the State of California to:

Congregation Ner Tamid
2761 Emerson Avenue
Las Vegas, Nevada 89121

In the Matter of:	Social Security No.: XXX-XX-XXXX [displayed in original; redacted for joint appendix]
Gilbert P. Hyatt	or Corporation No:
	For the years:

This demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge. The information will be used by this department for investigation, audit, or collection purposes pertaining to the above-named taxpayer for the years indicated.

1. Please verify dates of any contributions made since 1991.

2. Copy of application for membership.

3. Copy of any address changes submitted and date submitted.

4. Records of attendance at any services, meetings, or functions.

FRANCHISE TAX BOARD

By: S. Cox

Authorized Representative

Dated: 3/23/95

Telephone: (XXX) XXX-XXXX [displayed in original; redacted for joint appendix]

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 53264

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,
Appellant,
v.
GILBERT P. HYATT,
Respondent.

APPEAL FROM JUDGMENT –
EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY
HONORABLE JESSIE WALSH, DISTRICT JUDGE

RESPONDENT'S APPENDIX
VOLUME 84

April 11, 1995

Tadashi Sekizawa
President and Representative Director
Fujitsu Limited
6-1, Marunouchi 1-chome
Chiyoda-ku, Tokyo 100, Japan

Dear Sir:

For the purposes of administering the California Personal Income Tax Law, and for that purpose only, the following information is requested under authorization of California Personal Income Law Section 19254.

Please indicate which dates wire transfers were made to Gilbert P. Hyatt. Please refer to copy of letter enclosed.

For your own convenience, you may make marginal notations on this copy of this letter and return it in the enclosed envelope.

Thank you for your valuable cooperation.

Sheila Cox
Tax Auditor
Telephone (XXX) XXX-XXXX (displayed in original; redacted for joint appendix)

7.9 Any communication under this Agreement shall be in writing and shall be effective upon sending the communication via facsimile or via first class mail, postage prepaid to:

(a) *If to* COMPANY

FUJITSU LIMITED
6-1, Marunouchi 1-chome
Chiyoda-ku, Tokyo 100, Japan
Telephone No.: XXX-XX-X-XXXX-XXXX (displayed in original; redacted for joint appendix)
Facsimile No.: XXX-XX-X-XXXX-XXXX (displayed in original; redacted for joint appendix)
Attention: General Manager
Legal Division

(b) If to HYATT:

Gilbert P. Hyatt
c/o Gregory L. Roth, Esq.
PRETTY, SHROEDER, BRUEGGEMANN &CLARK
444 South Flower Street, Suite 2000
Los Angeles, California 90071-2921
United States of America
Telephone No.: (XXX) XXX-XXX (displayed in original; redacted for joint appendix)
Facsimile No.: (XXX) XXX-XXX (displayed in original; redacted for joint appendix)

Each party may change its address given above by written notice to the other party. The new address will become effective upon receipt of such notice.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate counterparts.

FUJITSU LIMITED	GILBERT P. HYATT
By: s/Tadashi Sekizawa Tadashi Sekizawa	By: s/Gilbert P. Hyatt Gilbert P. Hyatt
Title: President and Representative Director	
Date: October 23, 1991	Date: October 14, 1991

April 11,1995

Akiri Kokaji, Assistant Director
Matsushita Electric Industrial Co., Ltd.
Intellectual Property Center
1006, Kadoma, Kadoma-shi
Okasa 571 Japan

Dear Sir:

For the purposes of administering the California Personal Income Tax Law, and for that purpose only, the following information is requested under authorization of California Personal Income Law Section 19254.

Please indicate which dates wire transfers were made to Gilbert P. Hyatt. Please refer to copy of letter enclosed.

For your own convenience, you may make marginal notations on this copy of this letter and return it in the enclosed envelope.

Thank you for your valuable cooperation.

Sheila Cox
Tax Auditor
Telephone (XXX) XXX-XXXX (displayed in original; redacted for joint appendix)

Mr. Gilbert P. Hyatt
7841 Jennifer Circle
La Palma, California, 90623

November 15, 1991

Dear Mr. Hyatt:

We are happy to reach an agreement with you on this matter. As Dr. Mizuno, Executive Vice-President of our company has signed the Patent Agreement, we would like to send it to you, please find.

With best regards.

Yours sincerely,

s/Akira Kokaji
Akira Kokaji
Assistant Director
Intellectual Property Center

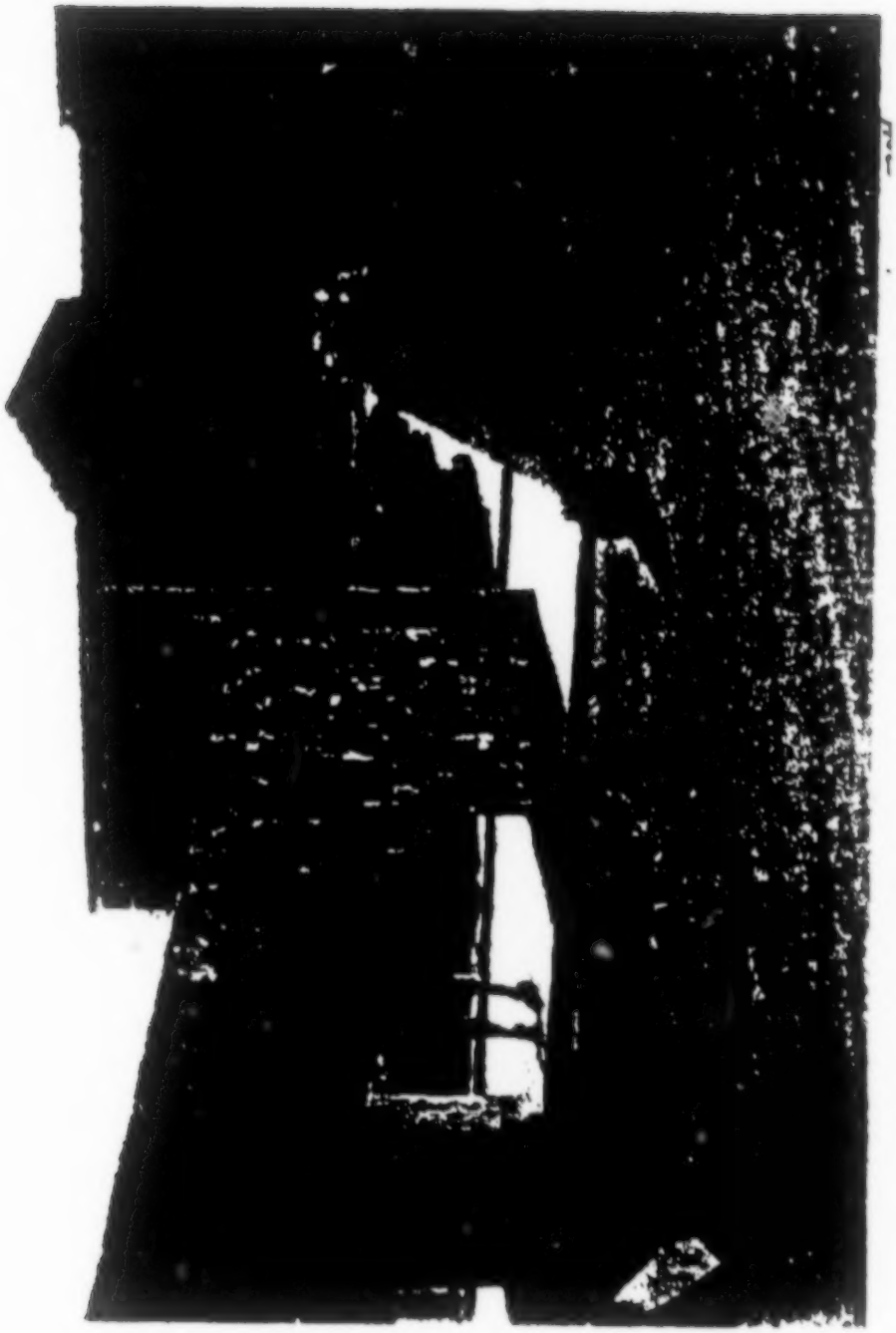
IN THE SUPREME COURT
OF THE STATE OF NEVADA

No. 53264

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,
Appellant,
v.
GILBERT P. HYATT,
Respondent.

APPEAL FROM JUDGMENT –
EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY
HONORABLE JESSIE WALSH, DISTRICT JUDGE

RESPONDENT'S APPENDIX
VOLUME 85



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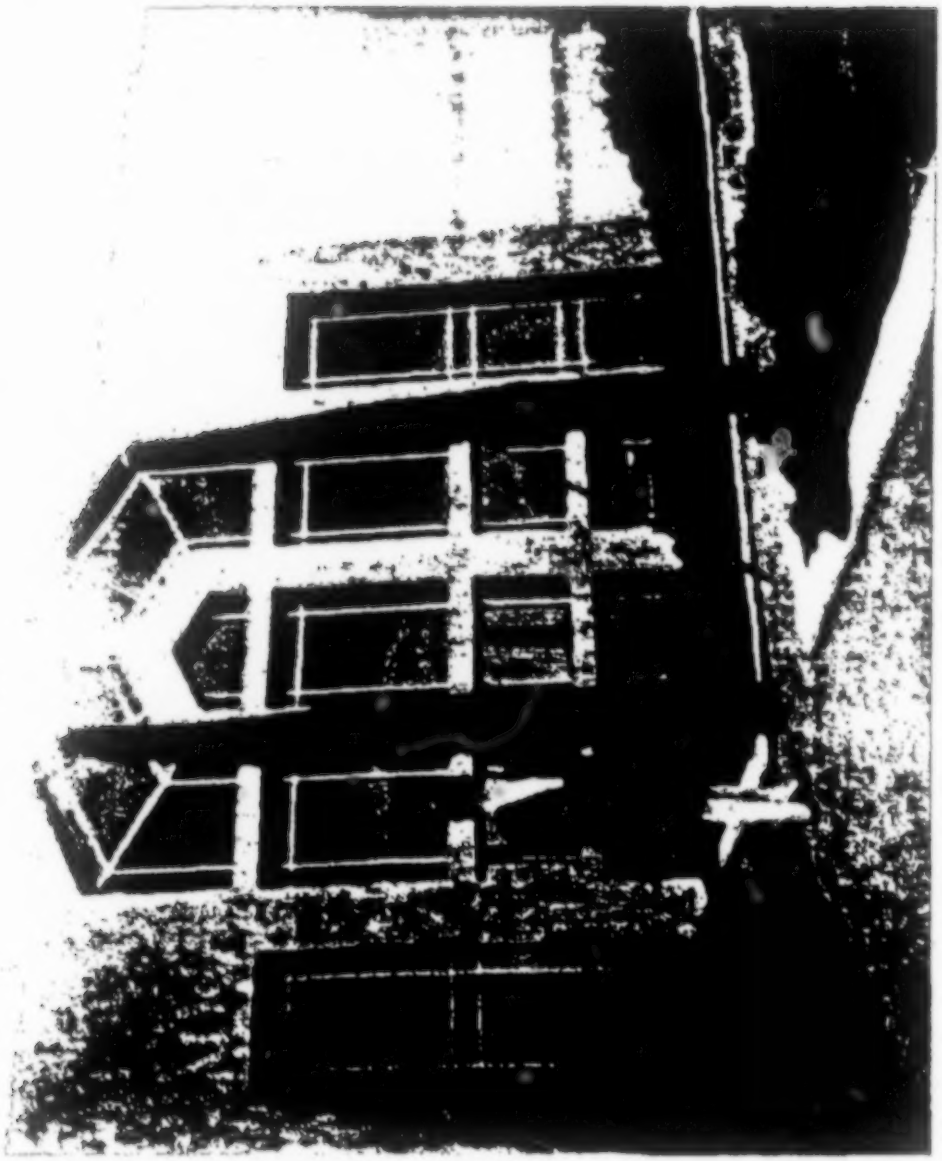

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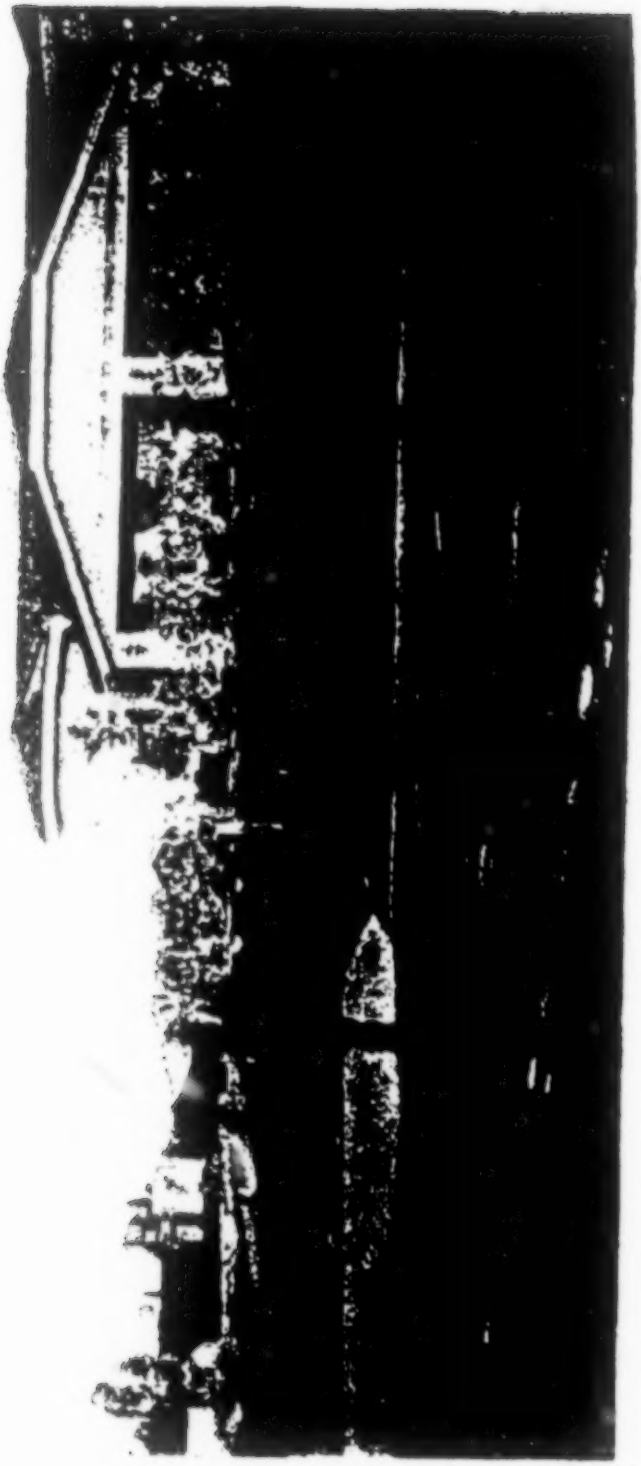

RA021013

DISTRICT COURT
CLARK COUNTY, NEVADA

No. A382999

GILBERT P. HYATT,
Plaintiff,

v.

CALIFORNIA STATE FRANCHISE TAX BOARD,
Defendant.

BEFORE THE HONORABLE JESSIE WALSH,
DISTRICT COURT JUDGE

Wednesday, April 23, 2008

JURY TRIAL DAY 6 TRANSCRIPT EXCERPTS

APPEARANCES:

FOR THE PLAINTIFF:	DON KULA, ESQ. MARK HUTCHINSON, ESQ. PETER BERNHARD, ESQ.
FOR THE DEFENDANT:	PAT LUNDVALL, ESQ. JAMES BRADSHAW, ESQ. CARLA HIGGINBOTHAM, ESQ.
ALSO PRESENT:	GILBERT P. HYATT Plaintiff

VIDEOTAPE DEPOSITION OF CANDACE LES

[163] MR. BOURKE. Did you become familiar with an auditor named Sheila Cox?

MS. LES: Yes.

Q: Did you become familiar with an audit that Sheila Cox was handling called the Hyatt audit?

A: Yes.

Q: Could you tell me about your relationship with Sheila Cox.

A: We were friends and then we weren't.

Q: During the time that you were friends did she talk to you about the Gil Hyatt audit?

A: Yes.

Q: Could you tell me the period of time when you first met Ms. Cox.

A: I don't really recall. I think after she started I met her. She started some years after me, three or four after me.

Q: Would a rough approximation be around 1993 to 1997 you were close friends with her?

A: We weren't close friends in the beginning, but, yeah, I met her in probably '93

Q: And with respect to the time you met her, did you have any professional relationship with her? Were you more experienced at that time than she was?

[164] A: Yes.

Q: And were you already handling residency cases?

A: Yes.

Q: When you met her in '93, had she handled any residency cases?

A: No.

Q: Did you have any role in training Ms. Cox?

A: I believe I did.

Q: Were you ever assigned to the Gil Hyatt audit at the FTB?

A: No.

Q: Ms. Cox and your relationship eventually did have a breakdown, correct?

A: Yes.

Q: What month and year was that?

A: It began around 12, '96.

Q: And did there reach kind of a crisis point or a time of estrangement begin?

A: Yes.

Q: What month and year was that?

A: March '97.

Q: And at that point in time did you and she reach the mutual agreement about terminating your relationship?

A: Yes.

Q: What motivated you to terminate your relationship with [165] her?

A: I could no longer tolerate her.

Q: What was it that caused you to decide not to be a friend with her anymore?

A: As I stated then and now, it's philosophical and spiritual differences.

Q: Did any of those differences relate to racism?

A: Yes.

Q: Could you tell me what you have in mind about Sheila Cox being a racist?

A: It would be my opinion that Sheila Cox is a racist.

Q: Did Sheila Cox ever talk to you relating to the Gil Hyatt case and say anything that could be regarded as racist?

A: I believe so, yes.

Q: And what did Sheila Cox say?

A: Sheila Cox said, "I'm going to get that Jew bastard."

Q: Did you regard what she said about Mr. Hyatt being Jewish as a slur?

A: Well, a racial epithet, you know, to call someone a Jew bastard.

* * *

[171] MR. MOSS: Do you recall whether she said she had seen any neighbors?

MS. LES. Yes.

Q: Did she describe those neighbors for you?

A: Yes.

Q: What did she say?

A: She said that the neighborhood in a cul-de-sac was like on lookout, and there was one guy in particular who had one arm who was like the lookout guy, and it was really creepy.

Q: When she says on the lookout, what did you understand her to mean?

A. The lookout for FTB residency auditors.

Q. Did she say how she knew that they were on the lookout for FTB?

A: No, she didn't.

Q. Did she say how old this one-armed man was?

[172] A: I believe he was described as an old one-armed man.

Q. Did she say that his arm was cut off at the elbow or at the mid arm or –

A. One armed, that's it.

Q. Did she have any other names or words she used to describe the neighbors or associates of Gil Hyatt?

A. She told me it was a cast of ghouls looking out for -like on lookout for State auditors.

Q. Did Ms. Cox ever give you any indication of what it meant to be on lookout for State auditors? Had you ever heard of this before in your career?

A. Yeah. I knew what she meant.

Q. What did she mean?

A. I believe she meant that like to tip him off that the, you know, the federals are here, you know.

Q. Is this the sort of thing that you would expect to be documented or put down in writing in a progress report or in the work papers if it was true and document it?

A. What?

Q. That there were people on the lookout. That she had observed people on the lookout looking out for the FTB people.

A. Well, if it was a fact, I'd expect it to be in work papers.

* * *

[184] MR. BOURKE: Did you ever get the impression or the sense during your audits that sometimes an auditor would get fixated on a particular audit?

MS. LES: Absolutely.

Q. And did that happen to Sheila Cox?

A. Sheila also, yes.

Q. And on what case did Sheila Cox get fixated?

A. I believe the Gil Hyatt case she was obsessed with.

Q. And when you say obsessed, what do you mean?

A. Talk about incessantly, inability to let go even after it was closed to the point where she created a real fiction in her head about it, in my opinion.

DISTRICT COURT
CLARK COUNTY, NEVADA

No. A382999

GILBERT P HYATT,
Plaintiff,

v.

CALIFORNIA STATE FRANCHISE TAX BOARD,
Defendant.

BEFORE THE HONORABLE JESSIE WALSH,
DISTRICT COURT JUDGE

Thursday, April 24, 2008

JURY TRIAL DAY 7 TRANSCRIPT EXCERPTS

APPEARANCES:

FOR THE PLAINTIFF:	PETER BERNHARD, ESQ. MARK HUTCHINSON, ESQ. DON KULA, ESQ
FOR THE DEFENDANT:	PAT LUNDVALL, ESQ. CARLA HIGGINBOTHAM, ESQ. JAMES BRADSHAW, ESQ.

VIDEOTAPE DEPOSITION OF CANDACE LES

[28] MR. BOURKE: Now, with respect to your career with 300 cases and only two fraud cases, is that unusually low for the FTB, or is that about right?

MS. LES: I'd say it's unusually high.

Q: So the FTB issues a fraud penalty very extremely rarely?

A: From what I saw in my ten years, almost ten years, yes.

* * *

[41] MR. BOURKE: Did she ever tell you about how many information requests she was sending out and what she was observing about Mr. Hyatt?

MS. LES: She talked about it, yeah.

Q: What did she tell you?

A: That she was bombarding him with information document requests, and as I said before, you know, she did talk incessantly about the audit.

Q: Now, you had quite a bit of experience, maybe 60 or [42] more residency audits and a total of 300 audits. Did you send out third-party information demands on a regular basis?

A: No.

Q: When you read the narrative did you get any sense or form an opinion about the strength of the case?

A: When I read the closing letter and had been listening to Sheila talk about the case, I believed she created an entire fiction about the taxpayer.

Q: And why do you say that?

A: I believe – what do you mean why?

Q: What do you base – what did you base your conclusion about that she had created an entire fiction?

MR. WILSON: Object to the question. Go ahead and answer it if you can.

MR. BOURKE: You – let me rephrase it.

BY MR. BOURKE:

Q: You came to a judgment based upon all your discussions with her and having read the narrative, or the closing letter, that she had come up with an entire fiction about Gil Hyatt, right?

A: Yes.

Q: What is it that led you to that belief?

MR. WILSON: Same objection.

THE WITNESS: Okay. It was a process. Over a period of time I saw her uncertain about the case. I saw her [43] rack up a lot of hours on the case and I saw her try to get cosigners, her colleagues, on to the case, which wasn't going too well until she started flavoring it with details about one-armed men and making the taxpayer seem like a vial character. And it was over a period of time where this was done, and then when I finally saw this, the proposed assessment, I thought she had created a fiction about this guy that – and this is how she got legal to buy into it.

Q: When you read the narrative, did you get any sense or form an opinion about the strength of the case?

A: When I read the closing letter, and had been listening to Sheila talk about the case, I believe she created an entire fiction about the taxpayer.

* * *

[46] MR. BOURKE: Now, was one of the criticisms of you by upper management when they wrongfully terminated you that you had improperly settled with taxpayers?

MS. LES: Yes.

* * *

[56] MR. BOURKE: Now, did she ever call Mr. Hyatt any names?

MS. LES: Yes.

Q: What did she call him?

A: She did call Gil Hyatt, just as we talked about yesterday in the opening deposition, was Jew bastard, after she received his synagogue from Las Vegas support letter.

Q: Now, you said that she called one of the neighbors a one-armed man, and another person saying that Mr. Hyatt was surrounded by ghouls. Did she ever have any other insult names that she used on Mr. Hyatt?

A: She called him a cheap bastard.

[57] Q: What did she say about him being cheap?

A: How cheap it was – this was in reference to Grace Jeng's tax returns. I think that she received – Grace Jeng received salary from Gil and –

MR. MOSS: Wait a second. Wait a second. Could she talk about Grace Jeng's –

MR. BOURKE: Grace Jeng is willing to waive any discussion about her tax situation that this witness learned at the FTB.

MR. MOSS: Okay.

THE WITNESS: I thought we went through that yesterday.

BY MR. BOURKE:

Q: Grace Jeng and Gil Hyatt, we can talk about both.

MR. MOSS: Sorry.

THE WITNESS: Sorry. Thanks. Yeah, that somehow the salary that Grace Jeng was being paid by Gil Hyatt, you know, for a millionaire, he was a cheap bastard.

BY MR. BOURKE:

Q: Did she ever call him a freak?

MR. WILSON: Objection, the question leads and suggests.

THE WITNESS: She did.

BY MR. BOURKE:

Q: Was she afraid of him yelling at her or raising his [58] voice?

A: I don't know what her fear stemmed from.

Q: Did she say why she felt he was a freak?

A: Yes.

Q: What did she say?

A: Sheila disclosed to me how Gil Hyatt's son was murdered in Huntington Beach and she thought that that made him a freak.

Q: Because some member of his family was a victim of a crime?

A: Because a member of his family was murdered and it was unsolved.

Q: Did she tell you anything about the murder of his son being a sensitive matter within the family, and did you regard it as a sensitive matter?

A: I certainly did.

MR. WILSON: I object, the question leads. Go ahead and answer.

THE WITNESS: It was a sensitive matter.

* * *

[62] A: And she was at his window, at Gil Hyatt's window or at the house's window, and then she went to the mailbox. She was looking through it. I believe it was trash day. She lifted up the trash lid. And then I got up and I ran across the street to the Gil Hyatt side of the street. I was like, "Come on, come on, let's get out of here, come on."

She came back to the car. She got my camera. She took some pictures. I think I sat down on the curb one more time, and we got in, and we left.

* * *

[134] A: In my opinion Sheila Cox was obsessed with Gil Hyatt, the audit. I had seen other auditors obsessed with cases, it grips them, it takes over them and in my opinion Sheila was obsessed with it.

Q: And can you tell me what facts you saw that back up that opinion?

A: Well, the fact that she talked about Gil Hyatt's case incessantly, at least with me, and that she

seemed not to take advice from people that she specifically sought advice from; that she visited and sleuthed around Gil Hyatt's abode and neighborhood after the audit had been closed and out of her hands. And that really isn't normal, those three things.

Q: Now, with respect to the second one about not taking advice, can you tell me what advice she didn't take?

A: She told me that she asked Alan Shigemitsu for his advice and, you know, after a long time of contemplation or research Alan came up with whatever and she was very dissatisfied with it and she said she wasn't going to listen to what he said. And then with my own advice that I gave her about meeting with the taxpayer, that he would be the most likely one to have the answers and to be able to, you know, fill in the blanks, and she didn't listen to that either.

* * *

[135] THE WITNESS: Okay. I feel that it really is my obligation to correct the record. I read some of the excerpts from the summary judgment, the motion for the summary judgment and the brief, the reply brief, and I do feel like I'm being misrepresented in this regard, and it's about the allegation of racism against Sheila Cox. When I first filed the formal written complaint of harassment against her on October 3rd, 1997, I deliberately coded that charge as philosophical and spiritual differences because I regard a charge of racism as a very, very serious charge. And when I gave it to Brad La Cour, he asked me what I meant. I told him I felt she was a racist, there was no further dialogue. When my formal complaint got in the hands

of Dianne Lawrence, who was supposed to be investigating the complaint, she asked me what that was, spiritual and philosophical differences. And I told her and there was no further discourse on that line. So it's what I've been saying, and as it reads in the brief and the motion for summary judgment, it comes out like Sheila said, you know, "Jew bastard," and that she flatly denies that. And I would have to agree that's not what it [136] was. That was never my testimony, and that was not my characterization of what happened there. I deliberately coded it as spiritual and philosophical differences, and told those who were interested in what that was.

The brand of racism that I experienced from Sheila Cox, and I'm real clear on it, is this kind that I have seen my entire 40 years on this planet. And say I knew Sheila for five years, so that is 1,500 days. I heard her use racial slurs maybe 20 times in all those days, which is 1 percent of the time. So it's like just 1 percent of the time of the whole time I was friends with her. That's not very much at all.

Well, I can't quantify racism. When you get the feeling, when you are raised to be sensitive to it, because you are a minority and you have been the victim of it your whole life, you are aware of it when you see it. And it wasn't just these racial slurs that Sheila made in a joking sense like to say the way she talks out of the side of her mouth, "That Jew bastard," and I knew it was intended as a joke, because she was upset with him. I knew it was just her way of expressing herself, that she cross the line.

* * *

[139] MR. WILSON: [I]s it fair to say you were providing kind of consultant services to the Hyatt team as a former auditor, somebody who had knowledge of the audit process? Was that your function?

MS. LES: Yes, I think so.

Q: Okay. Did you in the course of that, did you do any analysis of the audit, that is, the determination of residency from what was in the file that you reviewed? Did you make any review of that to opine or comment on whether it was adequate, whether it was inadequate, whether there were things that should have been done that weren't, or things that were done that shouldn't have been done?

A: Well, no, it was a given that your client mishandled the whole audit. I mean, that was the fire that was there before I got introduced to these people. So mostly what we talked about were just, you know, I know this is going to sound really abstract, but how to get to the truth of the matter, you know.

DISTRICT COURT
CLARK COUNTY, NEVADA

No. A382999

GILBERT P. HYATT,
Plaintiff,

v.

CALIFORNIA STATE FRANCHISE TAX BOARD,
Defendant.

BEFORE THE HONORABLE JESSIE WALSH,
DISTRICT COURT JUDGE

Wednesday, April 30, 2008

JURY TRIAL DAY 11 TRANSCRIPT EXCERPTS

APPEARANCES:

FOR THE PLAINTIFF:	PETER BERNHARD, ESQ. MARK HUTCHINSON, ESQ. DONALD J. KULA, ESQ.
FOR THE DEFENDANT:	PAT LUNDVALL, ESQ. CARLA B. HIGGINBOTHAM, ESQ. JAMES BRADSHAW, ESQ.

DIRECT EXAMINATION OF EUGENE COWAN

[155] MR. KULA: Okay. This conversation with Ms. Jovanovich, which we've seen both your notes and her notes on, did you consider this some type of a threat from Ms. Jovanovich?

MR. COWAN: No. I did not consider it a threat. She was definitely sending me a message and I understood the message, but it wasn't a threat.

Q: What message did you think she was sending you?

A: It was going to be a large amount of digging and looking into Mr. Hyatt's affairs through the protest process. And for that reason, other taxpayers have really chosen to settle, also, to maintain their privacy.

Q: And was part of the message Mr. Hyatt should consider settling?

A: I think so.

DISTRICT COURT
CLARK COUNTY, NEVADA

No. A382999

GILBERT P. HYATT,
Plaintiff,

v.

CALIFORNIA STATE FRANCHISE TAX BOARD,
Defendant.

BEFORE THE HONORABLE JESSIE WALSH,
DISTRICT COURT JUDGE

Monday, May 12, 2008

JURY TRIAL DAY 18 TRANSCRIPT EXCERPTS

APPEARANCES:

FOR THE PLAINTIFF:	PETER C. BERNHARD, ESQ. MARK HUTCHINSON, ESQ. DONALD J. KULA, ESQ.
FOR THE DEFENDANT:	PAT LUNDVALL, ESQ. CARLA B. HIGGINBOTHAM, ESQ. JAMES BRADSHAW, ESQ.

DIRECT EXAMINATION OF GILBERT P. HYATT

[73] MR. BERNHARD: Now, Mr. Hyatt, after you got word that the '91 audit was being assigned to Ms. Jovanovich for a protest, you understood that Mr. Cowan and Ms. Jovanovich had a telephone [74] call. Is that correct?

MR. HYATT: Yes.

Q: I believe Mr. Cowan testified about that call that there was a message about what would happen if Mr. Hyatt insisted on proceeding with the protest. Do you remember Mr. Cowan's testimony about that?

A: That's correct.

Q: What did you understand the message to be that was conveyed by Ms. Jovanovich to Mr. Cowan to you?

A: I understood that the message was that Mr. Hyatt should settle this case, or we would have a much more intrusive investigation in the protest and make all of his private information public.

Q: Did there come a time when you learned whether or not that message had been carried out?

A: Yes. That's exactly what the FTB did. The – Ms. Woodward was the third protest officer, after Ms. Jovanovich and Mr. Dunn over there. And Ms. Woodward came out with this enormous, very intrusive IDR which asked over 160 questions, many of them very, very personal and very, very silly, and asking for all kinds of documentation, which was to me

an implementation of the – what I considered to be the threat by Ms. Jovanovich.

DISTRICT COURT
CLARK COUNTY, NEVADA

No. A382999

GILBERT P. HYATT,
Plaintiff,

v.

CALIFORNIA STATE FRANCHISE TAX BOARD,
Defendant.

BEFORE THE HONORABLE JESSIE WALSH,
DISTRICT COURT JUDGE

Thursday, May 22, 2008

JURY TRIAL DAY 26 TRANSCRIPT EXCERPTS

APPEARANCES:

FOR THE PLAINTIFF:	PETER C. BERNHARD, ESQ. MARK HUTCHINSON, ESQ. DONALD J. KULA, ESQ.
FOR THE DEFENDANT:	PAT LUNDVALL, ESQ. CARLA B. HIGGINBOTHAM, ESQ. JAMES BRADSHAW, ESQ.

VIDEOTAPE DEPOSITION OF ANNA JOVANOVICH

[79] Q: Would you read your comments on this page, please.

MS. JOVANOVICH: "Talked at length with rep about the status of the case. He was basically interested in two things; one, time frame for resolution of the case, and two, making a pitch as an advocate for the strength of his client's case. Described protest process in detail."

And detail is underlined because I wanted to explain to him the way I handled a protest, in that, I did [80] not view myself as a rubber stamp for the department, but for – as someone who would weigh the evidence from both sides equally, and hold a hearing and so on. And also settlement possibilities. And that was that some – the settlement bureau began, oh, I don't know somewhere in the early 1990's.

The Department had a policy of encouraging settlement, and for someone like Mr. Hyatt who was concerned about privacy, settlement might be a possible solution for him, because I wanted Mr. Cowan to understand that once a case left protest, any other proceeding after that would require public – would become public knowledge. So that a Board of Equalization hearing would be public knowledge, a Superior Court trial would be public knowledge, and I was aware of Mr. Hyatt's concern for privacy. So I mentioned that settlement was one possibility before these matters became public.

And then I explained the necessity because I knew that somewhere along the line I was going to write a huge letter, for extensive letters in these high profile,

large dollar, fact-intensive cases which merit in-depth investigation and exploration of many unresolved facts and questions. Outlined my procedure for reviewing a case on protest and that after I returned to his client's file, which would be now, we are into July – which would be approximately July 2nd after review of intervening case, I [81] would be sending a lengthy letter asking for information and documents.

Told him I would keep him informed as the case progressed and would advised him when review completed. Letter to supervisor, et cetera. Because when I would write such a lengthy letter, I would have to submit it to my supervisor for review. In other words, if we write letters – I don't know what the – what joys you gentlemen have in private practice, but when we in government write letters, they have to be reviewed by many levels, depending on how important the case is or whatever the situation is.

And that's something over which I have no control which I wanted Mr. Cowan to understand also, that if I wrote a letter, it could take sometime for that letter to actually be mailed because of supervisory review. And it says, "he," meaning the rep, "reiterated that his client prefers we finish 1991 first rather than wait to consider it with '92. So it sounds like '92 wasn't finished then at that time.

MR. WILSON: So did you take that to mean that to mean that Mr. Hyatt had expressed an interest in speedy resolution of his protest?

A: Oh, I think they all – all taxpayers do.

Q: I know. I'm sure that most taxpayers do. But specifically with respect to Mr. Hyatt, you took this

conversation to indicate that he wanted his protest resolved [82] as soon as possible?

A: I think I always felt that, because I think they always do, the taxpayers. And I'm not saying this sarcastically. These people have a lot of issues. They want a proper resolution, and they're entitled to one. But if things come up and we are understaffed, we can't always do that. And it's my policy to inform the representatives if there is a delay. And that is what I was doing in the course of these phone conversations. The unfortunate thing was that this was one of the worst cases I had in terms of interruptions.

Q: And you believe that your department was understaffed in the summer of 1997 given the caseload you had?

A: Residency cases started growing and at that time I think the department may have been in the process of hiring additional people.

Q: So the answer is you were understaffed then?

A: I think so.

Q: With respect to the importance of the Hyatt case, how important was it at that time?

A: Well, important in terms of what? I mean, all cases are important. All of these cases are important. We had many high-level, high-profile taxpayer cases with huge amounts of money. And each of them was, as far as I'm [83] concerned, equally important. Of course, those were the – which were the most important were those which had been around the longest.

Q: Had Mr. Hyatt's case been around very long?

A It had been around long, but there may have been some that had been around longer.

* * *

[85] MR. WILSON: With respect to your next sentence, it says that you described in detail and also settlement possibilities?

MS. JOVANOVICH: Right.

Q: Could you tell me what was said about that?

A: About what? The protest process in detail?

Q: And also the settlement possibilities.

A: The protest process meaning that when the case is logged in, it's assigned to someone and how I handle a case, which means that I review every single document in the file. I make notes of things that I feel I need additional information about. I send an extraordinarily lengthy letter to representatives which are never happy to receive, and request all the information that I think is relevant to me to make a determination.

And then I went on to describe, as I said to you before, the appeal process and the – if after a hearing, I were to find in favor of the Franchise Tax Board. I would have no way of knowing at this stage how I would find because [86] I would have to receive all the documents first in order to weigh both sides. There would be a hearing that would be held and then at the conclusion of the hearing, I guess there's a chance for rebuttal if I were to make a finding on behalf of the Franchise Tax Board.

And I wanted to impress upon Mr. Cowan, that I did not view myself as a rubber stamp for the

department, that if the evidence were – supported his taxpayer's position, then I would make such a finding. If not, and I found in favor of FTB, then there were other possibilities for him. One was the Board of Equalization, the other was Superior Court.

I took note of his client's great concern for privacy, and said that many people who have high profile cases sometimes may wish to settle their cases because this might be less intrusive for them, in particular Mr. Hyatt, because he was so concerned about privacy.

The Department had a policy in setting up the settlement bureau to resolve disputes by settlement, and this might be one possible solution for Mr. Hyatt so that he would not have to expose himself to public scrutiny. Because the minute a case goes to the Board of Equalization, all documents become public.

Although, you know, I can't say that there are throngs of crowds that are rushing out to get the documents from the Board of Equalization, and there's usually not much [87] publicity attached to the Board of Equalization or even Superior Court tax cases.

But I felt that Mr. Cowan should be aware that settlement was an option for his client because of his concern for privacy.

DISTRICT COURT
CLARK COUNTY, NEVADA

No. A382999

GILBERT P. HYATT,
Plaintiff,

v.

CALIFORNIA STATE FRANCHISE TAX BOARD,
Defendant.

BEFORE THE HONORABLE JESSIE WALSH,
DISTRICT COURT JUDGE

Friday, May 30, 2008

JURY TRIAL DAY 30 TRANSCRIPT EXCERPTS

APPEARANCES:

FOR THE PLAINTIFF: PETER C. BERNHARD, ESQ.
MARK HUTCHINSON, ESQ.
DONALD J. KULA, ESQ.

FOR THE DEFENDANT: PAT LUNDVALL, ESQ.
CARLA B. HIGGINBOTHAM, ESQ.
JAMES BRADSHAW, ESQ.

CROSS-EXAMINATION OF SHEILA GRADY COX

[128] MR. HUTCHINSON: Okay. And Ms. Les also testified that you and she joked about this, that many of the large income taxpayers in California were Jewish. Was she accurate in her testimony on that point, ma'am?

MS. COX: No, sir, I don't believe so.

Q: Ms. Les testified that the "Jew bastard" comment was made after you received a response from Mr. Hyatt's synagogue and you showed her the letter. Was she accurate, in your opinion, in her testimony on that subject?

A: No, sir. I don't ever recall receiving a response from his synagogue, and that comment that she made about the "Jew bastard" is totally wrong. And I made a statement about that yesterday and it just hurts me deeply. So I don't want to go off on a tirade about that again.

Q: Ms. Les further testified that you made the "Jew bastard" comment in a joking sense out of the side of your mouth and that she knew it was a joke, and that was how you expressed yourself. Was she accurate in that testimony, ma'am?

A: As I said yesterday, I don't – I don't talk in that manner.

[129] Q: And Ms. Les testified that she wanted to correct the record after learning that her testimony had been used in this case regarding the "Jew bastard" comment and said that she had heard you make your – make racist comments maybe 20 times or one percent of the time that you were friends, which she

felt was not that often. Was she accurate in that assessment, ma'am?

A: No, sir.

Q: Okay. Ms. Les further testified that your comments were not restricted to Jewish people; that you felt differently about different minority groups. Was Ms. Les' testimony accurate in that regard, ma'am?

A: No, sir.

DISTRICT COURT
CLARK COUNTY, NEVADA

No. A382999

GILBERT P HYATT,
Plaintiff,

v

CALIFORNIA STATE FRANCHISE TAX BOARD,
Defendant.

BEFORE THE HONORABLE JESSIE WALSH,
DISTRICT COURT JUDGE

Tuesday, June 24, 2008

JURY TRIAL DAY 46 TRANSCRIPT EXCERPTS

APPEARANCES:

FOR THE PLAINTIFF: PETER C. BERNHARD, ESQ.
MARK HUTCHINSON, ESQ.
DONALD J. KULA, ESQ.

FOR THE DEFENDANT: PAT LUNDVALL, ESQ.
CARLA B. HIGGINBOTHAM, ESQ.
JAMES BRADSHAW, ESQ.

DIRECT EXAMINATION OF
SHEILA MARIE SIMMONS SEMANA

[138] MS. LUNDVALL: Across the time that you had worked with Ms. Cox, did you ever know her to make discriminatory remarks, particularly against those that may be practicing of the Jewish faith?

MS. SEMANA: No, I did not.

Q: Anything that she would make as far as from the off-color standpoint; any anti-semitic remarks? Anything of that nature?

A: No, she never did.

DISTRICT COURT
CLARK COUNTY, NEVADA

No. A382999

GILBERT P. HYATT,
Plaintiff,

v.

CALIFORNIA STATE FRANCHISE TAX BOARD,
Defendant.

BEFORE THE HONORABLE JESSIE WALSH,
DISTRICT COURT JUDGE

Wednesday, June 25, 2008

JURY TRIAL DAY 47 TRANSCRIPT EXCERPTS

APPEARANCES:

FOR THE PLAINTIFF:	DON KULA, ESQ. MARK HUTCHINSON, ESQ. PETER BERNHARD, ESQ.
	PAT LUNDVALL, ESQ.
FOR THE DEFENDANT:	JAMES BRADSHAW, ESQ. CARLA HIGGINBOTHAM, ESQ.

DIRECTI EXAMINATION OF
JAHANA ELVARADO

[78] MR. BRADSHAW: Now, on that occasion or any others, did Ms. Cox say anything derogatory about Mr. Hyatt?

MS. ALVARADO: No, sir.

Q: Did she say anything derogatory about Ms. Jeng?

A: No, sir.

Q: Has she ever made any anti-semitic remarks in your presence?

A: Oh, no.

Q: Or over the phone?

A: No.

DISTRICT COURT
CLARK COUNTY, NEVADA

No. CV-S-98-284 HDM (LRL)

GILBERT P. HYATT,

Plaintiff,

v.

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA, and DOES 1-100, inclusive,

Defendants.

Filed: March 4, 1998

PLAINTIFF'S MOTION TO REMAND (ORAL ARGUMENT REQUESTED)

Pursuant to 28 U.S.C §1447(c), Plaintiff Gilbert P. Hyatt moves to remand the above-captioned action back to the Eighth Judicial District Court of the State of Nevada in and for the County of Clark (Case No. A382999) because Plaintiff does not wish to burden this Court with an investment of its scarce judicial assets in entertaining the resolution of an action which is outside its jurisdiction. The grounds for Plaintiff's motion to remand are as follows:

1. The Defendant Franchise Tax Board of the State of California ("FTB") is a governmental agency of the State of California which has not received authorization to waive California State immunity under the Eleventh Amendment, and federal district

court jurisdiction to entertain this action is thus foreclosed;

2. Aside from the dispositive intervention of the Eleventh Amendment, there is no federal question upon which this Court could base its jurisdiction; and

3. As a matter of law, no diversity exists by virtue of the State of California, through the FTB, being a party defendant to this action.

[2] A. ANALYSIS

I. Federal Jurisdiction Is Lacking Because Of Eleventh Amendment Immunity; Remand Is Therefore Necessary.

This Court lacks subject matter jurisdiction under the Eleventh Amendment to the Constitution of the United States. Under the circumstances of the instant case, the Eleventh Amendment forecloses federal district court jurisdiction. In relevant part, the Eleventh Amendment provides, "The Judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by Citizens of another State. . . ." U.S Const. Amend. XI.

The FTB's removal petition omits reference to a waiver by California of its Eleventh Amendment immunity, and, moreover, California statutory and decisional law leave no doubt that California has not "*by either express language or overwhelming implications*" waived such immunity. *Edelman v. Jordan*, 415 U.S. 651, 673 (1974) (emphasis added). Without such a waiver by California, this Court is without power to adjudicate the instant dispute and

must remand it back to Nevada's Eighth Judicial District Court.

* * *

[7] The Ninth Circuit touched on this issue as part of a complex fact pattern in which defendants, including the State of Hawaii, removed an action from state to federal court. The District Court thereafter found that certain claims against the state and state employees acting in their official capacities were barred by the Eleventh Amendment, and other claims were not barred due to certain exceptions to the Eleventh Amendment not applicable in the [8] instant action.[6] In addition to other rulings, the Ninth Circuit affirmed the District Court's ruling that it could not hear claims against the state barred by the Eleventh Amendment despite voluntary removal to federal court by the state. *See Kruse v. Hawaii*, 68 F.3d 331, 334 (9th Cir. 1995) (holding that although Eleventh Amendment bar against some claims will not prevent removal, the federal courts may not hear those claims barred by the Eleventh Amendment).[7]

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[6] For example, Congress has the right to abrogate the states' rights under the Eleventh Amendment in legislation enacted in order to enforce the Fourteenth Amendment. *See Atascadero*, 473 U.S. at 238 (reasoning that the Eleventh Amendment is "necessarily limited by the provisions of section 5 of the Fourteenth Amendment," and that Congress may abrogate the Eleventh Amendment without the states' consent when acting pursuant to section 5 of the Fourteenth Amendment). No Fourteenth Amendment claim is at issue in the present action.

[7] Similar to *Stephans*, in *Kruse* the court dismissed the claims against the State over which the federal court lacked jurisdiction under the Eleventh Amendment instead of remanding to state

In the present action, the FTB's removal petition fails to constitute a valid, cognizable waiver of California's Eleventh Amendment as California law gives its attorneys no such authority.

c. California has not waived its Eleventh Amendment immunity in its constitution, statutory laws or decisional law.

Plaintiff has discovered no authority under California law from which it can even be argued that California has waived its Eleventh Amendment immunity or that attorneys representing the state in legal proceedings have such waiver authority. Statutes and case law establish that the opposite is true. *See Riggle v. California*, 577 F.2d 579, 585, 586, n.9 (9th Cir. 1978) (holding that California's Tort Claims Acts waived immunity only for claims filed in its state courts and noting that reference to a state's venue statutes is appropriate when determining waiver of Eleventh Amendment immunity)[8]; *Deseret Water, Oil, & Irrigation Co. v. California*, 202 F. 498, 500 (9th Cir. 1913) (holding that attorney general's appearance in trial court could not be a waiver of Eleventh Amendment immunity when statute authorizing such appearance limited consent of the state to be sued only in its own state courts).

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court because such claims did not, on the face of the complaint, state a cause against the state. 68 F.3d at 334, n.2.

[8] Nonetheless, under *Nevada v. Hall*, 440 U.S. 410, 414 (1979), a state's own sovereign immunity has no application in the courts of a sister state.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

No. CV-S-98-0284 (HDM)(LRL)

GILBERT P. HYATT,
Plaintiff(s),

v

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,
Defendant(s).

May 1, 1998

MINUTES OF THE COURT

PRESENT: HONORABLE HOWARD D. McKIBBEN, CHIEF U.S. DISTRICT JUDGE

Deputy Clerk: Bette Stewart
Reporter/Recorder: Kathryn M. French

Counsel for Plaintiff(s): Thomas L. Steffen and Mark A. Hutchison

Counsel for Defendant(s): Thomas R. C. Wilson, Matthew C. Addison & Jim C. Guidici

PROCEEDINGS: Telephonic Hearing on Plaintiff's Motion to Remand (#5)

2:00 p.m. Court convenes.

Arguments are made on the motion to remand by Thomas Steffen on behalf of plaintiff and by Thomas Wilson on behalf of defendant.

The court sets forth the findings of fact and conclusions of law on the record.

IT IS ORDERED that Plaintiff's Motion to Remand (#5) is granted. Plaintiff's motion for costs is *denied*. This case is remanded to the Eighth Judicial District Court of the State of Nevada in and for the County of Clark.

The remaining motion, Defendant's Motion to Quash Service of Process and for No Other Relief (#12), is reserved for the state court to address.

2:35 p.m. Court adjourns.

LANCE S. WILSON, CLERK

By: /s/ [Illegible]

Deputy Clerk